No. 10909

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

HAROLD C. STROTZ,

Appellant,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Appellee.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States for the Southern District of California, Central Division

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Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

SIMON & GARBUS
242 North Canon Drive
Beverly Hills, Calif.

For Appellee:

FRANK MICHELS and
JACOB J. LIEBERMAN
1009 Commercial Exchange Building
416 West Eighth Street
Los Angeles 14, Calif. [1*]

*Page number appearing at foot of Certified Transcript.

DEBTOR'S PETITION

In the District Court of the United States for the Southern District of California
Central Division

In Bankruptcy

No. .....

In the Matter of

HAROLD C. STROTZ,

Bankrupt.

To the Honorable Judge of the District Court of the United States for the Southern District of California:

The Petition of Harold C. Strotz, residing at No. 9243 Doheny Road, in the City of Los Angeles, County of Los Angeles, State of California, by occupation a (None) now, formerly a stock-broker, and employed by None (or engaged in the business of.....), respectfully represents:

1. Your petitioner as resided, (or has had his domicile) at 9243 Doheny Road, Los Angeles, California, within the above judicial district, for a longer portion of the six months immediately preceeding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. The schedule hereto annexed, marked Schedule A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and, so far as it is possible

to ascertain, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Act.

4. The schedule hereto annexed, marked Schedule B, and verified by your petitioner's oath, contains an accurate inventory of all his property, real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said Act.

Harold C. Strotz
Petitioner

SIMON & GARBUS
By Morton Garbus
Attorney for Petitioner

State of California
County of Los Angeles—ss.

I, Harold C. Strotz, the petitioner named in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief.

Harold C. Strotz,
Petitioner

Subscribed and sworn to before me this 21st day of October, 1940.

Eugene H. Frank,
Notary Public in and for the County of Los Angeles, State of California. [2]

Summary of Debts and Assets
(From the Statements of the Debtor in
Schedules A and B)

		Dollars	Cents
Schedule A....1—a	Wages	None	
Schedule A....1—b (1)	Taxes due United States	None	
Schedule A....1—b (2)	Taxes due States	None	
Schedule A....1—b (3)	Taxes due counties, districts and municipalities	None	
Schedule A....1—c (1)	Debts due any person, including the United States, having priority by laws of the United States	None	
Schedule A....1—c (2)	Rent having priority	None	
Schedule A....2	Secured claims	$833,411.70	
Schedule A....3	Unsecured claims	1,048,419.16	
Schedule A....4	Notes and bills which ought to be paid by other parties thereto	None	

Schedule A....5	Accommodation paper	None
	Schedule A, total	$1,881,830.86
Schedule B....1	Real estate.....	None
Schedule B....2—a	Cash on hand.....	None
Schedule B....2—b	Negotiable and non-negotiable instruments and securities	None
Schedule B....2—c	Stocks in trade....	None
Schedule B....2—d	Household goods....	$100.00
Schedule B....2—e	Books, prints and pictures	None
Schedule B....2—f	Horses, cows and other animals	None
Schedule B....2—g	Automobiles and other vehicles See B-4.....	($525.00)
Schedule B....2—h	Farming stock and implements	None
Schedule B....2—i	Shipping and shares in vessels.....	None
Schedule B....2—j	Machinery, fixtures and tools	None
Schedule B....2—k	Patents, copyrights, and trade-marks	None

Schedule B....2—1	Other personal property	None
Schedule B....3—a	Debts due on open accounts	None
Schedule B....3—b	Policies of insurance	None
Schedule B....3—c	Unliquidated claims	None
Schedule B....3—d	Deposits of money in banks and elsewhere	None
Schedule B....4	Property in reversion, remainder, expectancy or trust.....	$525.00
Schedule B....5	Property claimed as exempt Exempt	($100.00)
Schedule B....6	Books, deeds and papers	
	Schedule B, total	$625.00

Harold C. Strotz,
Petitioner

[3]

Schedule A. Statement of All Debts of Bankrupt
Schedule A-1.
Statement of all creditors to whom priority is secured by the act.

	Amount due or Claimed Dollars	Cents
A.—Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding $600 each, earned within three months before filing the petition. Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent unliquidated or disputed.—Nature and consideration of the debt; and whether incurred or contracted as partner or joint contractor and, if so, with whom.		
None	None	
B.—Taxes due and owing to—(1) The United States	None	
(2) The State of California	None	
(3) The county, district or municipality of Los Angeles	None	None
State of California		
Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that		

fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt; and whether incurred or contracted as partner or joint contractor and, if so, with whom.

C.—(1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt; and whether incurred or contracted as partner or joint contractor and, if so, with whom.

None None

C.—(2) Rent owing to a landlord who is entitled to priority by the laws of the State of ....., accrued within three months before filing the petition, for actual use and occupancy.

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where incurred or contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt; and whether

incurred or contracted as partner or joint contractor and, if so, with whom.

None None

Total None

Harold C. Strotz,
Petitioner

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Schedule A-2

Creditors Holding Securities

(N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the Act of Congress relating to Bankruptcy, and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

Reference to Ledger or Voucher—Names of Creditors, Residences (if unknown that fact must be stated)—Description of Securities—When and where debts contracted, and nature and consideration thereof—whether claim is contingent, unliquidated or disputed.

	Value of Securities	Amount due or Claimed
Estate of Pauline D. Rudolph, c/o Chicago Title and Trust Company, Chicago, Illinois. For moneys advanced, represented by two judgments on promissory notes—(1) for $350,000 (2) for		

$150,000—both dated February 15, 1930, with interest at 3% per annum on No. (1) and 5% per annum on No. (2) to maturity, maturing 1 year from date, and after maturity at the rate of 7% per annum of each of the notes. Said promissory notes, together with interest thereon to May 1, 1940, approximated $802,411.77. Nothing has been paid on principal or interest to date. $802,411.77

On February 15, 1930, petitioner executed a collateral trust agreement in favor of Chicago Title and Trust Company of Chicago, Illinois, as trustee for Pauline D. Rudolph, by the terms of which petitioner purported to transfer as collateral security for said indebtedness and the notes evidencing same, all of his right, title and interest as beneficiary under the Last Will and Testament of petitioner's father, Charles Nicolas Strotz. Pursuant to paragraph XXII of said Last Will and Testament of petitioner's father, Charles Nicolas Strotz, which is a "spendthrift clause," petitioner's interest in the estate of his father is expressly declared to be not a

vested interest and not subject to the right to anticipate, assign or encumber the same, nor subject to claims of creditors of petitioner.

* * *

John H. Fahey, trustee for Franklin Dohn Rudolph—trust agreement dated July 27, 1935. Franklin Dohn, Charles Dohn, Pauline Dohn, Rudolph Sherman, Herbert N. Butz. The following language is applicable to all of the above names: (Address: c/o Chicago Title and Trust Company, Chicago, Illinois.)

On May 31, 1940, your petitioner executed an agreement in writing in favor of all of the persons here named, by the terms of which, petitioner acknowledged his indebtedness to said estate of Pauline D. Rudolph, deceased, in the sum of $802,411.77, all of said persons named being trustees, beneficiaries or otherwise interest in said claim and estate.

Total $802,411.77

* * *

Harold C. Strotz,
Petitioner

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Schedule A-2
(Cont'd)
Creditor Holding Security

	Value of Securities	Amount due or Claimed
Continental Illinois National Bank and Trust Company of Chicago, 231 South La Salle Street, Chicago, Illinois.		
For moneys owed as evidenced by a promissory note executed by petitioner July 1, 1935, in the principal sum of $23,044.70, together with interest thereon from the date thereof to date, estimated to be in the sum of approximately $7,955.23. On November 6, 1935, your petitioner executed what purports to be an authorization directed to First National Bank of Chicago, as trustee of the residuary trust estate created under the last Will and Testament of Charles Nicolas Strotz, deceased, authorizing said trustee to pay to the said Continental Illinois National Bank and Trust Company of Chicago the foregoing claim of indebtedness out of any of the assets which your petitioner might be entitled to receive from the residuary trust estate at the time fixed for distribution of the		

corpus thereof. Reference is here again made to paragraph XXII the Last Will and Testament of petitioner's father, Charles Nicolas Strotz, as to the spendthrift trust provision thereof.	$30,999.93
Total	$30,999.93

Harold C. Strotz,
Petitioner
[6]

Schedule A-3.

Creditors whose Claims are Unsecured

(N.B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner	Amount due or Claimed Dollars	Cents

or joint contractor with any other person; and, if so, with whom.

Martin T. O'Brien, as Receiver for Reliance Bank and Trust Company, Chicago, Illinois, c/o attorneys William J. Currer, Jr. and Harold F. Clary, 811 West Seventh Street, Los Angeles, California—

Judgment obtained in Superior Court, Los Angeles, California, in action No. 444462, based upon judgment in Cook County, Illinois; action General No. 558936, based upon statutory and constitutional liability of petitioner as stockholder of said bank. Judgment entered September 13, 1940, in Judgment Book 1098 at page 127, Records of County Clerk at Los Angeles, $48,865.58, together with interest thereon as provided by law. Attorneys for plaintiff: William J. Currer, Jr. and Harold F. Clary, 811 West Seventh St., Los Angeles, California. $ 48,865.58

* * *

Mary Flanagan, Catherine F. Malloy, Elizabeth Swindle, Leonard F. McGee, John B. Harrington, doing business as McGee & Harrington, Leonard F. McGee, Logan L. Mullins, as Receiver of Madison Square State Bank, a corporation, c/o William A. Sherwin, 542 South Broadway, Los Angeles, California.

Judgment obtained in the Superior Court, Los Angeles, California, in action No.

432312, based upon judgment of Cook County, Illinois, action General No. 559485, based upon statutory and constitutional liability of petitioner as stockholder of said bank. Judgment entered September 23, 1940, in records of County Clerk, County of Los Angeles, for $35,811.10, together with interest thereon, as provided by law, and costs of suit in the sum of $13.00. Attorney for plaintiff, William A. Sherwin, 542 South Broadway, Los Angeles, California. 35,824.10

* * *

Hamilton Vose, Jr., 450 West Superior Street, Chicago, Illinois.

For moneys advanced as represented by promissory note in the original sum of $9,000.00, together with interest thereon accumulated to date in a sum totalling, principal and interest, approximately $12,500.00; the exact date and amount of said note and interest cannot at this time be ascertained. $ 12,500.00

* * *

Seneca Securities Co. or Corp. c/o Irving Herriott, 120 South La Salle Street, Chicago, Illinois (last known address).

For moneys advanced as represented by a judgment in the original sum of $13,500.00, together with interest thereon accumulated to date in a sum totalling, principal and interest, approximately $16,000.00; the ex-

act date and amount of said judgment cannot at this time be ascertained. Judgment rendered in Cook County, Illinois. $ 16,000.00

Total $113,189.58

Harold C. Strotz,
Petitioner

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Schedule A-3 Continued

Creditors whose Claims are Unsecured

(N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.)

Reference to Ledger or Voucher.—Names of Creditors.—Residences (if unknown, that fact must be stated).—When and where contracted.—Whether claim is contingent, unliquidated or disputed.—Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount due or Claimed Dollars	Cents

Eugenia A. Vandeveer, c/o Mr. Earl Deming, Taylorville, Illinois.

Moneys due by terms of property settlement agreement, as represented by a promissory note or notes in the original sum of $150,000.00. Interest estimated thereon due in the sum of $55,000.00. Principal and interest to date approximately $205,000.00. $205,000.00

* * *

Weinress & Company, 231 South La Salle Street, Chicago, Illinois. Also c/o Ben W. Heineman, Attorney at Law, 1 North La Salle Street, Chicago, Illinois.

For moneys owed as represented by a promissory note payable on demand, executed by petitioner February 29, 1931, in the sum of $14,810.57, accumulated interest thereon to August 30, 1938, being $5,430.33 at 5%, equalling an aggregate sum of $20,420.90. Estimated interest to date, in addition, $2,150, making a total obligation to date in the sum of $22,390.90. 22,390.90

* * *

Clara A. Strotz, 622 North Sierra Drive, Beverly Hills, California.

For moneys owed, as represented by a promissory note or notes, upon which there is now due on account of principal and interest the sum of approximately $193,984.54. The exact dates of said notes and

the exact principal obligation are unknown to petitioner. 193,984.54

* * *

Mrs. Bertha Feld, 622 North Sierra Drive, Beverly Hills, California.

For moneys owed, as represented by a promissory note, upon which there is now due on account of principal and interest the sum of approximately $17,000.00. The exact date of said note and the exact principal obligation is unknown to petitioner. 17,000.00

* * *

John J. Mitchell, 310 South Michigan Boulevard, Chicago, Illinois.

For moneys owed as represented by a promissory note in the principal sum of approximately $10,000.00, plus accumulated interest thereon in the sum of $9,000.00, being a total obligation to date of approximately $19,000.00. The date of execution and the exact principal amount thereof is unknown to petitioner. 19,000.00

* * *

F. B. Keech & Co.—Estate of F. B. Keech, c/o Earnest Early of McCanliss & Early, 31 Nassau Street, New York, N. Y.

For moneys due to F. B. Keech & Co., brokers, by reason of partnership interest at time of stock market crash. Said ob-

ligation to the firm at that time amounted to $477,854.14. No claim has been asserted by F. B. Keech & Co. for the pay-

Total $457,375.44

Harold C. Strotz,
Petitioner

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Schedule A-3 Continued

Creditors whose Claims are Unsecured

	Amount due or Claimed
ment thereof, save and except that Col. Frank Browne Keech, during his lifetime, agreed that he would accept from the petitioner the sum of $50,000.00 in full settlement of said obligation. At that time your petitioner executed a promissory note made payable to Col. Frank Browne Keech in the sum of $50,000.00, which promissory note has never been paid. Your petitioner does not know whether he is released from his obligation to F. B. Keech & Co. and/or Col. Frank Browne Keech in the sum of $477,854.14, and that whether in lieu thereof his obligation would now be $50,000.00, plus interest thereon, and therefore your petitioner lists this debt in the	

total original sum, together with any interest thereon that might be claimed. $477,854.14

Total $477,854.14

Harold C. Strotz,

Petitioner

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Schedule A-4

Liabilities on Notes or Bills Discounted which ought to be Paid by the Drawers, Makers, Acceptors, or Indorsers.

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, acceptors, or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars shall be stated as to notes or bills on which the debtor is liable as indorser.)

Reference to Ledger or Voucher.—Names of holders as far as known.—Residences (if unknown, that fact must be stated).—Place where contracted.—Whether claim is disputed.— Nature and consideration of liability, whether same was contracted as part-	Amount due or Claimed. Dollars	Cents

ner or joint contractor, or with any other person; and, if so, with whom.

None None

Total None

Harold C. Strotz,
Petitioner
[10]

Schedule A-5

Accommodation Paper

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.)

	Amount due or Claimed. Dollars	Cents
Reference to Ledger or Voucher.—Names of Holders.—Residences (if unknown, that fact must be stated).—Names and residences of persons accommodated.—Place where contracted.—Whether claim is disputed.—Whether liability was contracted as partner		

or joint contractor, or with any other person; and, if so, with whom.

None None

Total None

Harold C. Strotz,
Petitioner

Oath to Schedule A

State of California
County of Los Angeles—ss.

I, Harold C. Strotz, the person whose name subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Harold C. Strotz,
Petitioner

Subscribed and sworn to before me this 21st day of October, 1940.

(Seal) Eugene H. Frank,
Notary Public in and for the County of Los Angeles, State of California.

[11]

ner or joint contractor, or with any other person; and, if so, with whom.

None None

Total None

Harold C. Strotz,
Petitioner

[10]

Schedule A-5

Accommodation Paper

(N. B.—The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, acceptors, and indorsers thereof, are to be set forth under the names of the holders; if the debtor be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Give same particulars as to other commercial paper.)

	Amount due or Claimed. Dollars	Cents
Reference to Ledger or Voucher.—Names of Holders.—Residences (if unknown, that fact must be stated).—Names and residences of persons accommodated.—Place where contracted.—Whether claim is disputed.—Whether liability was contracted as partner		

Rights and Powers, Legacies and Bequests Interest in the estate of Anne Gould Strotz, deceased, probate No. 179971, Superior Court, Los Angeles, California	$525.00
Total	$525.00

Property heretofore conveyed for benefit of creditors.

	Amount realized as proceeds of property conveyed
Portion of debtor's property conveyed by deed of assignment, or otherwise, for the benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, as far as known to debtor.	
Attorney's Fees.	
None	None
Sum or sums paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.	
None	None
Total	None

Harold C. Strotz,
Petitioner

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Schedule B-4.

Property in reversion, remainder or expectancy, including property held in trust for the Debtor or subject to any power or right to dispose of or to charge.

(N. B.—A particular description of each interest must be entered, with a statement of the location of the property, the names and description of the persons now enjoying the same, the value thereof, and from whom and in what manner debtor's interest in such property is or will be derived. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized as the proceeds thereof, and the disposal of the same, as far as known to the debtor.)

General Interest.	Particular Description.	Estimated Value of Interest. Dollars	Cents
Interest in Land			
	None	None	
Personal Property			
	None	None	
Property in Money, Stock, Shares, Bonds, Annuities, etc.			
	None	None	

Schedule B-5.

Property claimed as exempt from the operation of the Act of Congress relating to bankruptcy.

(N. B.—Each item of property must be stated, with its valuation, and, if any portion of it is real estate, its location, description and present use.)

	Valuation Dollars	Cents
Property claimed to be exempt by the laws of the United States, with reference to the statute creating the exemption.		
None	None	
Property claimed to be exempt by State laws, with reference to the statute creating the exemption.		
Limited wardrobe and household goods and personal effects—under Section 90.2 of the Code of Civil Procedure of the State of California.	$100.00	
Total	$100.00	

Harold C. Strotz
Petitioner

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Schedule B-6.

Books, Papers, Deeds and Writings relating to Debtor's Business and Estate

The following is a true list of all books, papers, deeds and writings relating to petitioner's trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in petitioner's possession or under petitioner's custody and control, or which are in the possession or custody of any person in trust for petitioner, or for petitioner's use, benefit, or advantage; and also of all others which have been heretofore, at any time, in petitioner's possession, or under petitioner's custody, or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

	Dollars	Cents
Books	None	None
Deeds	None	None
Papers	None	None

Harold C. Strotz
Petitioner

OATH TO SCHEDULE B

State of California, County of Los Angeles—ss.

I, Harold C. Strotz, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my property, real and personal, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Harold C. Strotz
Petitioner

Subscribed and sworn to before me this 21st day of October, 1940.

(Seal) Eugene H. Frank
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Oct. 22, 1940. [20]

[Title of District Court and Cause.]

ADJUDICATION AND ORDER OF REFERENCE

At Los Angeles, in said District, on October 23, 1940 before the said Court in Bankruptcy, the petition of Harold C. Strotz that he be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said Harold C. Strotz is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to Ernest R. Utley, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Harold C. Strotz shall attend before said Referee on October 30, 1940 at his office in Los Angeles, California at 10 o'clock a. m., and shall submit to such orders as may be made by said Referee or by this Court relating to said matter in bankruptcy.

Witness, the Honorable Paul J. McCormick, Judge of the said Court, and the seal thereof, at Los Angeles, in said District, on October 23, 1940.

(Seal) R. S. ZIMMERMAN,
Clerk,

By M. M. Karcher,
Deputy Clerk.

[Endorsed]: Filed Oct. 23, 1940. [21]

[Title of District Court and Cause.]

AMENDMENT TO SCHEDULE A. 3.

Name of Creditor	Address
Central Republic Bank & Trust Company, Pledgor	Chicago, Illinois
Reconstruction Finance Corp., Pledgee	United States Agency Chicago, Illinois Office.

Judgment obtained by Reconstruction Finance Corporation against your petitioner and nine other directors of the Madison Square State Bank of Chicago, in Appellate Court of Illinois, on or about December 31, 1940, for $245,811.00

Your petitioner was one of ten former directors of the Madison Square State Bank of Chicago, Illinois, who jointly executed a promissory note in the sum of approximately $210,000.00, in the year 1930, the exact date of which is unknown to petitioner, to the order of Central Republic Bank and Trust Company, which said promissory note was pledged by it to Reconstruction Finance Corporation, as part of the security given for a loan in the sum of $90,000,000.00, from the Federal Agency in the year 1932; that an action was commenced to enforce the payment of said promissory note by the said Reconstruction Finance Corporation, against your petitioner and the said other directors of the Madison Square State Bank of Chicago, but judgment in said action was in favor

of the petitioner and the said directors, entered on April 24, 1936, in the Circuit Court of the State of Illinois.

That on December 31, 1940, there appeared a news item in the Journal of Commerce of Chicago, Illinois, reporting the fact that the Appellate Court of Illinois, had reversed the judgment of the Circuit Court, the result of which reversal, in the opinion of your petitioner, reinstates a claim against him upon said promissory note; that the judgment of reversal against your petitioner and the other former directors of the Madison Square State Bank of Chicago, is in the sum of $245,811.00.

Previous Total of Schedule A. 3	457,375.44

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Amount brought forward	$703,186.44
Present Total of Schedule A. 3	$703,186.44
Previous Total of Schedule A	$1,881,830.86
Amended Claim to Schedule A. 3	245,811.00
Present Total of Schedule A.	$2,127,641.86

Dated: Los Angeles, California
January 6, 1941.

HAROLD C. STROTZ
Petitioner.

Oath to Schedule A.

State of California :
County of Los Angeles : ss

I. Harold C. Strotz, the person whose name subscribed to the foregoing Schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information and belief.

HAROLD C. STROTZ
Petitioner.

Sworn and subscribed to before me this 7th day of January, 1941.

(Seal) EUGENE H. FRANK
Notary Public in and for said County and State.

[Endorsed]: Filed Jan. 8, 1941 at ..... min. past 12 o'clock ..... m. Ernest R. Utley, Referee; Louise Rodgers, Clerk.

[Endorsed]: Filed Jan. 9, 1941. [23]

[Title of District Court and Cause.]

PETITION FOR ARRANGEMENT UNDER CHAPTER XI, SECTION 321.

To the Honorable District Court of the United States, Southern District of California:

The petition of Harold C. Strotz, residing at 9243 Doheny Road, Los Angeles, California, not now having any occupation but previously being engaged as a stock broker, respectfully represents:

I.

That your petitioner has been duly adjudged a bankrupt on a petition filed by him in the above entitled court, on the 22nd day of October, 1940.

II.

That in connection with the filing of his said petition as aforesaid, your petitioner has filed and presented to the above entitled court a Summary of Debts and Assets, together with his oath attached thereto, as well as a Statement of Affairs, together with his oath attached thereto, reference to which Petition, Summary of Debts and Assets and Statement of Affairs is hereby made for all particulars contained therein, and all of the same are made a part hereof as if set forth herein at length.

III.

That in accordance with Chapter XI of the Bankruptcy Act, Section 321 thereof, petitioner now respectfully presents this Petition in the above mentioned pending bankruptcy Petition after his adjudication as aforesaid, for the reason that he desires to effect an Arrangement with his creditors, the provisions of which are hereinafter set forth.

IV.

That in the opinion of petitioner, it would be to the best interests of all of his creditors who have filed claims in this bankruptcy [24] proceeding to avail themselves of, and to accept, the Arrangement here offered.

V.

That for approximately ten (10) years last past your petitioner has not been engaged in any business or occupation of any consequence by reason of the fact that he has been insolvent and has been indebted to many persons, firms and corporations in a sum far in excess of his ability to pay, said total indebtedness amounting to the sum of $2,127,641.86.

VI.

That all of said debts are of long standing, having been incurred during, and as a result of, the stock market crash of 1929; that a portion of said debts arose by reason of the statutory liability of petitioner as an officer and director of national banks. That said national banks claim obligations which so arose and for which claims were filed as follows:

Logan L. Mullins, Receiver of Madison Square State Bank, in the sum of $35,811.10;

Martin T. O'Brien, Receiver of Reliance Bank and Trust Company, in the sum of $48,868.58;

That the claim of Reconstruction Finance Corporation on file herein in the sum of $340,566.44, in connection with which litigation is now pending, originally arose approximately eight (8) years ago, and is based upon an alleged guarantee joined in by the petitioner, together with

nine (9) other directors of a defaulting bank in Chicago, Illinois;

That the claim on file herein of Ernest R. Earley, Executor of the estate of Frank Browne Keech, in the sum of $50,000.00, is a compromised obligation arising out of the said stock market crash;

That the claim of Continental Illinois National Bank and Trust Company, on file herein in the sum of $32,055.70, was incurred on or before July 1, 1935, and was in the original sum of $23,044.70, the increased amount being for interest accrued thereon; [25]

That the claim of W. E. Fleming, agent for Eugenia Vollentine, on file herein in the sum of $168,410.85, and listed for a somewhat larger amount in the Schedule of your petitioner as being the claim of Eugenia A. Vandaveer, is of long standing and represents moneys due by the terms of a property settlement agreement;

That the claim of John J. Mitchell, on file herein in the sum of $8,966.87, and listed in the Schedule of the petitioner on file herein in the sum of $19,000.00, is a claim of long standing, the exact date of which cannot now be determined;

That the claim of Seneca Securities on file herein in the sum of $13,094.85 and listed in the Schedule of petitioner on file herein in the sum of $16,000.00, is an obligation of long standing, the exact date of which cannot at this time be ascertained.

Whereas your petitioner has filed his Schedule herein showing total debts owing by him, secured and unsecured, in the sum of $2,127,641.86, there has been filed to the date hereof, creditors' claims totalling only the sum of

$697,774.39, of which the claim of Reconstruction Finance Corporation, equalling approximately one-half (1/2) of said total claims, is contingent and now in litigation; of the balance of said total claims on file herein, petitioner is informed and believes, and therefore asserts that it may be possible to secure a release from W. E. Fleming, agent for Eugenia Vollentine, of her claim in the sum of $168,410.85, as well as a release from the claim of Ernest R. Earley, Executor of the Estate of Frank Browne Keech, in the sum of $50,000.00; that as a result of such releases, if the same could be obtained, the total amount of claims subject to this Arrangement would therefore be to that extent reduced.

VIII.

Proposed Arrangement

A. Secured Creditors:

1. Your petitioner is indebted to the estate of Pauline D. Rudolph and to Franklin N. Dohn, Charles Dohn, Pauline Dohn, Rudolph Sherman, Herbert N. Butz, John A. Faher, Trustee for Franklin Dohn Rudolph, in [26] the sum of $827,411.77, which claim is secured by a collateral trust agreement in the favor of Chicago Title and Trust Company of Chicago, Illinois, as trustee for Pauline D. Rudolph, by the terms of which petitioner proposed to transfer, as collateral security for said indebtedness, all of his right, title and interest as beneficiary under the Last Will and Testament of Charles

Nicolas Strotz, deceased. This creditor has not filed a claim in this bankr*tup*cy proceeding to the date hereof.

2. Your petitioner is also indebted to Continental Illinois Bank and Trust Company of Chicago, Illinois, in the sum of $32,055.70. In connection with this indebtedness, your petitioner executed what purports to be an authorization directed to the First National Bank of Chicago, as Trustee of the residuary trust estate created under the Last Will and Testament of petitioner's father, Charles Nicolas Strotz, deceased, authorizing said trustee to pay the claim of the said creditor out of any of the assets which your petitioner might be entitled to receive from said residuary trust estate at the time fixed for the distribution of the corpus thereof.

The above two are the only secured creditors of petitioner. In view of the fact that there are no assets in this bankruptcy estate, available for secured creditors, save the interest which petitioner may have in his father's trust estate as aforesaid, and in view of the fact that the secured creditor, estate of Pauline D. Rudolph, as aforesaid, has not filed any claim herein, this Arrangement will apply equally to secured and unsecured creditors filing claims.

B. Unsecured Creditors:

All unsecured debts affected by this Arrangement shall be treated on a parity, save and except those creditors who may, in order to assist the petitioner in effecting this Arrangement, waive any claim to share therein.

Your petitioner has no property or assets of any kind, but will arrange to obtain from his family, and will offer to his creditors, [27] cash in the sum of $10,000.00. In addition to said sum of $10,000.00, your petitioner will execute any necessary writing, by the terms of which he will assign to his creditors who may have an interest in this bankruptcy proceeding and a right to share therein, ten per cent (10%) of the right, title or interest which petitioner may have as beneficiary under the Last Will and Testament of his father's estate, Charles Nicolas Strotz, deceased. Attention is here called to the fact that pursuant to Paragraph XII of said Last Will and Testament of petitioner's father, which is a "Spendthrift *Claus*" provision, petitioner's interest in his father's estate is expressly declared to be not a vested interest and not subject to the right to anticipate, assign or encumber the same, nor subject to claims of creditors of petitioner.

It is the intention of the petitioner, in making this offer to his creditors, that any and all proceedings which may now be pending by the Trustee in Bankruptcy herein, to set aside any conveyances heretofore made by petitioner, on the ground of fraud, be dismissed. This intention is here expressed, on the ground that petitioner has not entered into any fraudulent conveyances, and that in making this Arrangement, he desires to settle and compromise all claims of creditors who may have filed their claims herein, as well as any claims of any person or persons who may suffer loss by reason of any proceeding

to set aside a conveyance of property made to him or them by your petitioner.

IX.

Should this Arrangement be confirmed and approved by the above entitled Court, petitioner will execute all necessary documents and papers to put into effect the proposed Arrangement.

X.

Your petitioner presents this Arrangement in good faith, without any intention to defraud or deceive his creditors, and this Arrangement is for the best interests of his creditors and is fair, equitable and feasible.

Wherefore, petitioner prays that this petition be referred, pursu- [28] ant to Section 321 of Chapter XI of the Bankruptcy Act, to a Referee, and that thereafter all proceedings be had in this case, in accordance with the provisions of said Chapter XI of said Bankruptcy Act, and for general relief.

Dated: April 28, 1941.

SIMON & GARBUS

By Morton Garbus

Attorneys for Petitioner

[Verified.]

[Endorsed]: Filed Apr. 30, 1941 at 45 min. past 11 o'clock a. m. Ernest R. Utley, Referee; Meredith Keith, Clerk.

[Endorsed]: Filed May 5, 1941. [29]

[Title of District Court and Cause.]

AMENDED PETITION FOR ARRANGEMENT UNDER CHAPTER XI, SECTION 321

To the Honorable District Court of the United States, Southern District of California:

The Amended Petition of Harold C. Strotz, residing at 9243 Doheny Road, Los Angeles, California, not now having any occupation but previously being engaged as a stock broker, respectfully represents:

I.

That your petitioner has been duly adjudged a bankrupt on a petition filed by him in the above entitled Court, on the 22nd day of October, 1940.

II.

That in connection with the filing of his said petition as aforesaid, your petitioner has filed and presented to the above entitled Court a Summary of Debts and Assets, together with his oath attached thereto, as well as a Statement of Affairs, together with his oath attached thereto, reference to which Petition, Summary of Debts and Assets and Statement of Affairs is hereby made for all particulars contained therein, and all of the same are made a part hereof as if set forth herein at length.

III.

That in accordance with Chapter XI of the Bankruptcy Act, Section 321 thereof, petitioner now respectfully presents [30] this Amended Petition in the above mentioned pending bankruptcy Petition after his adjudication as aforesaid, for the reason that he desires to effect an Arrangement with his creditors, the provisions of which are hereinafter set forth.

IV.

That in the opinion of petitioner, it would be to the best interest of all of his creditors who have filed claims in this bankruptcy proceeding to avail themselves of, and to accept, the Arrangement here offered.

V.

That for approximately ten (10) years last past your petitioner has not been engaged in any business or occupation of any consequence by reason of the fact that he has been insolvent and has been indebted to many persons, firms and corporations in a sum far in excess of his ability to pay, said total indebtedness amounting to the sum of $2,127,641.86.

VI.

That all of said debts are of long standing, having been incurred during and as a result of the stock market crash of 1929; that a portion of said debts arose by reason of the statutory liability of the petitioner as an officer and director of two national banks.

VII.

That creditors' claims have been filed herein to date in the total sum of $696,961.53; that the time to file creditors' claims has now expired.

VIII.

That the creditors' claims on file herein are as follows:

1. Logan L. Mullins, Receiver of Madison Square State Bank, in the sum of $35,811.10;

2. Martin T. O'Brien, Receiver of Reliance Bank [31] and Trust Company, in the sum of $48,055.70;

3. That the claim of Reconstruction Finance Corporation on file herein in the sum of $340,566.44, in connection with which litigation is now pending, originally arose approximately eight (8) years ago, and is based upon an alleged guarantee joined in by the petitioner, together with nine (9) other directors of a defaulting bank in Chicago, Illinois, in the original sum of $210,000.00;

4. That the claim on file herein of Ernest R. Earley, Executor of the estate of Frank Browne Keech, in the sum of $50,000.00, is a compromised obligation arising out of the said stock market crash;

5. That the claim of Continental Illinois National Bank and Trust Company, on file herein in the sum of $32,055.70, was incurred on or before July 1, 1935, and was in the original sum of $23,044.70, the increased amount being for interest accrued thereon;

6. That the claim of W. E. Deming, agent for Eugenia Vollentine, on file herein in the sum of $168,410.85, and listed for a somewhat larger amount in the Schedule of your petitioner as being the claim of Eugenia A. Vandaveer, is of long standing and represents moneys due by the terms of a property settlement agreement;

7. That the claim of John J. Mitchell, on file herein in the sum of $8,968.87, and listed in the Schedule of the petitioner on file herein in the sum of $19,000.00, is a claim of long standing, the exact date of which cannot now be determined;

8. That the claim of Seneca Securities on file herein in the sum of $13,094.85 and listed in the [32]

Schedule of petitioner on file herein in the sum of $16,000.00, is an obligation of long standing, the exact date of which cannot at this time be ascertained.

IX.

That the claim of the Reconstruction Finance Corporation, being in the sum of $340,566.44 as aforesaid, is contingent and is being litigated at present in the Supreme Court of the State of Illinois; that petitioner is informed and believes and therefore alleges the fact to be that in the event said litigation be determined in favor of the Reconstruction Finance Corporation, one or more of the other persons directly liable upon said litigation as aforesaid may be in a financial position to discharge all or a greater portion of said claim.

X.

There are no assets of any kind belonging to the bankrupt, save and except the proceeds of a Buick Convertible automobile, being in the sum of less than $500.00, and save and except that on or about the 27th day of May, 1941, there was delivered to the above entitled bankrupt estate the sum of $632.50, being a sum of money claimed by the Trustee in Bankruptcy as belonging to the bankrupt estate.

XI.

That petitioner is indebted to the estate of Pauline D. Rudolph and to Franklin N. Dohn, Charles Dohn, Pauline Dohn, Rudolph Sherman, Herbert N. Butz and John A. Faher, Trustee for Franklin Dohn Rudolph, jointly in the sum of $827,411.77, which claim is secured by a collateral trust agreement dated the 15th day of February, 1930, in favor of the Chicago Title and Trust Company of Chicago, Illinois as trustee for Pauline D.

Rudolph, by the terms of which petitioner proposed to transfer as collateral security for said indebtedness all of his right, title and inter- [33] est as beneficiary under the Last Will and Testament of his father, Charles Nicolas Strotz, deceased, said Last Will and Testament being dated August 5, 1927, and probated April 30, 1928, in the Superior Court of Cook County, Illinois; that on May 31st, 1940, the creditors named in this paragraph and your petitioner executed an amendment to said Collateral Trust Agreement, wherein and whereby only one-half of petitioner's interest in his said father's estate would be held by said creditors as security for their said joint claim, the other one-half being reserved by the petitioner, provided he be not in default in the performance of the terms and provisions of said amendment dated May 31st, 1940, and wherein and whereby petitioner was given the option to compromise the said entire joint indebtedness for the total sum of $150,000.00 cash.

XII.

That in connection with the petitioner's indebtedness to the Continental Bank and Trust Company of Chicago, Illinois, in the sum of $32,055.70, for which a claim has been filed herein as aforesaid, he executed what purports to be an authorization directed to the First National Bank of Chicago, as trustee of the residuary trust estate created under the Last Will and Testament of petitioner's father, Charles Nicolas Strotz, deceased, authorizing said trustee to pay the claim of said Continental Illinois Bank and Trust Company out of any of the assets which your petitioner might be entitled to receive from said residuary trust estate at the time fixed for the distribution of the corpus thereof.

XIII.

That petitioner has arranged to obtain a loan in the sum of $25,000.00 in cash, which sum he proposes to cause to be paid over to the above bankrupt estate, to be paid to those of his creditors whose claims on file herein will be allowed. That immediately upon the acceptance and approval of this petition said sum of [34] $25,000.00 in cash will be delivered over to the above named bankrupt estate.

That in addition to the payment of said sum of $25,000.00, petitioner will execute and deliver to the Trustee in Bankruptcy herein all necessary documents, by the terms of which he will assign to the creditors whose claims have been filed and allowed herein an interest to the extent of ten percent (10%) of any right, title or interest which petitioner may have as beneficiary under the Last Will and Testament of his father's estate, Charles Nicholas Strotz, deceased. Attention is here called to the fact that pursuant to paragraph XII of said Last Will and Testament of petitioner's father, which is a "spendthrift clause" provision, the interest of the petitioner in the estate of his father is expressly declared to be not a vested interest and not subject to the right to anticipate, assign or encumber the same, nor subject to claims of creditors of petitioner.

It is the intention of the petitioner, in making this offer to his creditors, that any and all proceedings which may now be pending by the Trustee in Bankruptcy herein to set aside any conveyances heretofore made by petitioner, on the ground of fraud or otherwise, be dismissed. This intention is here expressed on the ground that petitioner has entered into no fraudulent conveyance, and that in

making this Arrangement, he desires to settle and compromise all claims of creditors who may have filed their claims herein, as well as any claims of any person or persons who may suffer loss by reason of any proceeding to set aside any conveyance of property made to him or them by your petitioner.

It is also the intention of the petitioner that any assets of the bankrupt estate now in the possession of the Trustee in Bankruptcy as aforesaid be applied upon and not be deemed to be in addition to the sum of $25,000.00 offered herein. [35]

XIV.

Petitioner presents this Arrangement in good faith without any intention to defraud or deceive his creditors, and this Arrangement is for the best interests of his creditors and is fair, equitable and feasible.

Wherefore, petitioner prays that this petition be referred, pursuant to Section 321 of Chapter XI of the Bankruptcy Act, to a Referee, and that thereafter all proceedings be had in this case, in accordance with the provisions of said Chapter XI of said Bankruptcy Act, and for general relief.

Dated: July 1, 1941.

SIMON & GARBUS
MORTON GARBUS
By Morton Garbus
Attorneys for Petitioner [36]

[Verified.]

[Endorsed]: Filed Jul. 2, 1941 at ..... min. past 10 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk.

[Endorsed]: Filed Jul. 5, 1941. [37]

[Title of District Court and Cause.]

AMENDMENT TO PETITION FOR ARRANGEMENT AS AMENDED.

To the Honorable District Court of the United States, Southern District of California:

Comes now the bankrupt above named and files this amendment to his amended petition for arrangement under Chapter XI, Section 321, now on file in the above entitled proceeding.

That by the terms of said amended petition for arrangement to which reference is hereby made for full particulars it is provided, among other things, that there be offered to the creditors of this bankruptcy estate cash in the sum of Twenty Five Thousand ($25,000.00) Dollars to be paid to those of the bankrupt's creditors whose claims, on file herein, will be allowed.

That on the 12th day of November, 1941, there was deposited with the trustee of this bankruptcy estate sufficient cash to allow for the payment of said sum of Twenty Five Thousand ($25,000.00) Dollars as aforesaid.

That said amended petition for arrangement has been accepted to date by the following creditors of this bankruptcy estate:

Logan L. Mullins, Receiver of Madison Square State Bank	$ 35,811.10
Martin T. O'Brien, Receiver of Reliance Bank and Trust Company	48,055.70

Ernest R. Earley, Executor of the Estate of Frank Browne Keech	50,000.00
W. E. Deming, Agent for Eugenia Vollentine	168,410.85
John J. Mitchell	8,968.87
Seneca Securities	13,094.85
Total	$324,341.37

That the creditor, Reconstruction Finance Corporation, whose claim is in the sum of $340,566.44 has not to date approved or accepted said plan of arrangement. [38]

That the creditor, Continental Illinois National Bank and Trust Company, whose claim is in the sum of $32,055.70 has not to date approved or accepted said plan of arrangement.

That in order to obtain a majority of creditors in number and amount of claims, petitioner hereby amends said amended petition by proposing to cause to be paid over to the above bankrupt estate an additional sum of $7,000.00 in cash so that the total amount which would be available for distribution to the creditors whose claims are on file herein and allowed will be in the total sum of $32,000.00; that said additional sum of $7,000.00 will be paid over to the trustee of the above bankrupt estate forthwith and concurrently with the approval of the arrangement as amended herewith by the above entitled court.

That in addition to the payment of said sum of $32,000.00, petitioner will execute and deliver to the trustee in bankruptcy herein any and all documents which may be required of him pursuant to said petition for arangement and particularly pursuant to paragraph XIII of said amended petition; and nothing herein contained shall in any manner be deemed to detract from said amended petition which shall, in all respects, remain in full force and effect save as the offer therein contained is increased by the sum of $7,000.00 as aforesaid.

Wherefore, petitioner prays that this amendment to said petition for arrangement be filed in the above entitled proceedings and be deemed to amend said amended petition heretofore filed as aforesaid.

Dated: May 27, 1942.

SIMON & GARBUS
By Morton Garbus
Attorneys for Petitioner [39]

[Verified.]

[Endorsed]: Filed May 27, 1942 at 10 min. past 3 o'clock p. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk, g.

[Endorsed]: Filed Jun. 8, 1942. [40]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON PETITION FOR REVIEW

To the Honorable Judges of the Above Entitled Court:

I, Ernest R. Utley, one of the Referees in Bankruptcy of the above entitled Court, do hereby certify that:

The bankrupt herein filed his petition on October 22, 1940, and was adjudicated a bankrupt on October 23, 1940.

A first meeting of creditors was held on the 19th day of November, 1940, and a trustee was elected. On the same day, the bankrupt was examined and thereafter, from time to time, was examined at length under Section 21-A of the Bankruptcy Act.

Thereafter, certain petitions and orders to show cause came on for hearing wherein the trustee was the petitioner and F. J. Ward was the respondent.

On March 7, 1941, specifications of objection to discharge were filed by Reliance Bank & Trust Company and on March 19, 1941, specifications of objection to discharge were filed by Reconstruction Finance Corporation. Prior to a complete hearing and determination thereof and on April 31, 1941, the bankrupt herein filed a plan of arrangement under and pursuant to the provisions of Section 321 of Chapter XI of the Bankruptcy Act.

Thereafter and on July 2, 1941, the bankrupt filed an amended plan of arrangement which creditors rejected and later, and on May 27, 1942, the bankrupt filed an amendment to petition for arrangement as amended, which was accepted by all creditors having provable claims here-

in, except Reconstruction Finance Corporation [41] objected to said plan of arrangement upon the grounds:

1. That the bankrupt had committed certain acts, as indicated in the objections to discharge, which would prevent his discharge in bankruptcy.

2. That the claim of Eugenia Vollentine, a creditor voting for said plan of arrangement, is barred by the statute of limitations and that without said claim there is not a majority in amount in favor of said plan.

At the time of the hearing of said objections, it was stipulated that the Referee take into consideration all evidence offered before him at the first meeting of creditors, the 21-A examinations and all other hearings hereinabove referred to and there was no additional evidence offered.

On August 7, 1942, the undersigned Referee filed his memorandum of opinion wherein he overruled the objections to the second amended plan of arrangement and approved said plan and directed counsel for the trustee to prepare findings of fact, conclusions of law and an order in conformity with said memorandum of opinion.

Between August 7, 1942, and the date on which the findings and order were finally signed, there were certain stipulations between counsel for the bankrupt and counsel for the Reconstruction Finance Corporation as to certain matters of evidence and more particularly, it was stipulated that the claim of the Reconstruction Finance Corporation would not be paid in full from the estate of John L. Cunningham, deceased. Other stipulations referred to are in writing and attached hereto.

Question to Be Determined

The question to be determined is: Did the Referee err in overruling the objections to the plan of arrangement made by the Reconstruction Finance Corporation hereinabove set forth? [42]

Evidence

All of the evidence which counsel for the respective parties stipulated to and which was considered by the Court in determining the issues involved herein, was taken by the court reporter and transcribed and said transcripts will be submitted herewith together with all exhibits introduced in evidence. Since much of the evidence in the transcripts has no particular bearing upon the questions presented by said objections, I do not feel that any useful purpose would be served by repeating in this certificate the evidence offered but I shall leave it to the respective counsel to point out to this Honorable Court such portions of the testimony upon which each rely unless otherwise directed by this Honorable Court. However, it may be helpful to the Court to point out the following:

The bankrupt withdrew, from the account of the estate of Anne Gould Strotz, deceased, the sum of $11,500.00 on February 26, 1940, as shown by trustee's exhibit number 16 in the matter of Trustee v. F. J. Ward, being a photostatic copy of the bank records of said account. Also the check withdrawing said sum, which is trustee's exhibit number 6 in the matter of Trustee v. F. J. Ward. On the same day that this sum was withdrawn from this bank account in the Security First National Bank of Los

Angeles, the bankrupt secured the following cashiers checks from said bank, payable to the following:

Name of Payee	Amount	Date Cashed
Dr. Frederick Speik	$1800.00	March 13, 1940
Harold C. Strotz	3600.00	March 3, 1940
(see trustee's exhibit number 22 in the matter of Trustee v. F. J. Ward)		
Guy M. Peters	500.00	March 26, 1940
Bekins Van & Storage Co.	600.00	March 8, 1940
Sidney N. Strotz	3000.00	March 4. 1940
Hamilton Voss, Jr.	500.00	March 21, 1940
Harold C. Strotz	1500.00	Feb. 29, 1940
Total	$11,500.00	

(see trustee's exhibit number 21 in the matter of Trustee v. F. J. Ward) [43]

also, in this connection, see the bankrupt's testimony at page 45, line 14 to line 1, page 46; page 46, line 13 to 1, page 47, of the reporter's transcript of April 3rd and 4th, 1941. These checks show the various indorsements thereon and disclose that the checks issued to Guy M. Peters, Sidney N. Strotz, the bankrupt's brother, and Hamilton Voss, Jr., were all cashed in Chicago, Illinois. These cashiers checks account for the total of $11,500.00 withdrawn from the estate of the bankrupt's wife and the bankrupt's testimony discloses that a number of these checks were issued to creditors. Hamilton Voss, Jr., has a claim on file.

An examination of the bank account carried in the name of F. J. Ward, as shown by trustee's exhibit num-

ber 2 in the matter of Trustee v. F. J. Ward, does not disclose any large deposits in said account at or about the time of this withdrawal except said account does show a deposit of $3000.00 on March 2, 1940. The only cashiers check issued to the bankrupt and cashed prior to this date was the $1500.00 check hereinabove referred to. The bankrupt's testimony was to the effect that he may have deposited one or two thousand dollars of this money in the F. J. Ward account but that he cashed this $11,500.00 check, secured cashiers checks and used the money for the purpose of paying certain creditors, making a trip to New York and Honolulu, and for living expenses.

The bankrupt testified that he opened the bank account in the name of F. J. Ward in 1938 because of the fact that he was being harassed by his former wife, (see lines 9 to 13 inclusive, page 108 reporter's transcript from November 19, 1940 to March 14, 1941) yet, at line 17, page 13 to and including line 2, page 14, reporter's transcript of April 3rd and 4th, 1941, he testified that this particular wife was not listed in his schedules as a creditor. She has filed no claim herein. My attention has been called to no testimony or documentary evidence showing her to be a creditor. All of the bankrupt's obligations, except the obligations owing to [44] his mother and possibly his aunt, both of whom were very friendly, were contractual obligations arising in the State of Illinois, payable in the State of Illinois and, therefore, not subject to attachment in California and not subject to a levy of execution because of no existing judgment in the State of California. No creditor, other than those two mentioned, was in a position to levy upon the bankrupt's bank account from the time the account in the name of

F. J. Ward was opened in 1938 until the same was closed. If the bankrupt feared a levy of attachment or execution by any person other than his former wife, no mention is made of such person by name.

Comments by the Referee

My memorandum of decision, attached hereto, generally explains my reasons for arriving at the conclusions reached except that the effect of same may have been changed slightly by the subsequent stipulation of counsel that the claim of Reconstruction Finance Corporation would not be paid in full from the estate of John L. Cunningham, deceased.

The petition for review of Reconstruction Finance Corporation is more in the form of a brief or argument supporting its contentions and contains much matter and argument not proper in a certificate of review. For this reason, I wish to make the following comment:

I note that in this petition for review, counsel for Reconstruction Finance Corporation quotes certain statements made by the Referee during the course of argument on a motion to strike certain testimony. The views expressed by the Referee at the time were expressed in the light of the motion made and then under discussion and were not intended as an expression of what the findings of the Court should be upon the merits of the case. This trial was never concluded due to the filing of the plan of arrangement. In order to permit a witness to be excused, certain testimony was received, subject to a motion to strike, (see page 30, line 26; [45] line 4, page 31, lines 14 to 16 inclusive, page 37; lines 20 to 22 inclusive, page 41; lines 4 to 7 inclusive, page 43; lines

15 to 22 inclusive, page 43; lines 1 to 3 inclusive, page 101; lines 2 and 3, page 107 of reporter's transcript of April 3rd and 4th, 1941) and such a motion was made by counsel. (See page 154 and the discussion that followed) The Referee finally granted the motion in part. (See lines 6 to 11 inclusive, page 174 of reporter's transcript of April 3rd and 4th, 1941) If the entire transcript is read from page 154, the statements of the Referee will appear in an entirely different light from those quoted by counsel for Reconstruction Finance Corporation. However, since I have had an opportunity to study a transcript of the evidence together with the exhibits and documentary evidence, I have come to the conclusion that some of the views expressed by me in connection with the arguments on the motion to strike are not supported by the evidence. For example, it will be observed that I was laboring under the impression at the time that there were creditors who were in a position to attach or levy execution upon the assets of the bankrupt, which clearly is not the case. Furthermore, I stated that I remembered no evidence of the bankrupt having made an effort to pay any creditor. A more careful examination of the evidence shows that creditors did receive payments as shown by cashiers checks.

The following documents are transmitted herewith:

1. Petition and schedules
2. Statement of Affairs
3. Order of Reference and adjudication
4. Amended schedules

   (See Clerk's File for documents listed above)
5. Specification of objection to discharge (Reliance Bank and Trust Co.)

6. Petitions for order to show cause directed to F. J. Ward
7. Orders to show cause directed to F. J. Ward [46]
8. Specification of objections to discharge (Reconstruction Finance Corporation)
9. Answer to specification of objection to discharge
10. Petition for arrangement under Chapter XI, Section 321
11. Acceptance of plan by Hamilton Vose, Jr.
12. Objection of Continental Illinois National Bank and Trust Company of Chicago to confirmation of arrangement
13. Surrender of security to bankrupt estate
14. Points and authorities in support of objection
15. Amended petition for arrangement under Chapter XI, Sec. 321
16. Specifications of objections to amended petition for arrangement—Reconstruction Finance Corporation
17. Amendment to petition for arrangement as amended
18. Creditors' consents to arrangement
19. Consent of Continental Illinois National Bank & Trust Co.
20. Points and authorities, memorandum of law (bankrupt)
21. Order disallowing claim of Allan D. Cunningham, executor of the estate of John T. Cunningham, deceased
22. Points and authorities in opposition to confirmation of arrangement and on objections to discharge of bankrupt (Reconstruction Finance Corporation)
23. Additional points and authorities (R. F. C.)

24. Answer to additional points and authorities (bankrupts atty.)
25. Proposed findings of fact, conclusions of law, and order
26. Objections to proposed findings, etc. (R. F. C.)
27. Memorandum of Decision
28. Objections to proposed findings of fact, conclusions of law and order upon objections of R. F. C. to bankrupt's discharge and to claim of Eugenia Vollentine
29. Stipulations re objections to discharge and trustee v. Ward
30. Findings of Fact, conclusions of law and order
31. Petition for extension of time to file petition for review
32. Order for extension of time to file petition for review
33. Petition for review
34. Claim of Eugenia Vollentine [47]
35. Exhibits in the matter of Trustee v. F. J. Ward
36. Reporter's Transcripts of:
    November 19, 1940 to March 14, 1941
    April 4, 1941
    July 20, 1942 and September 29, 1942
    April 3, 1941 and April 4, 1941
37. Judgment Docket—copy

Respectfully submitted,

ERNEST R. UTLEY
Referee in Bankruptcy

Dated: December 30, 1942

[Endorsed]: Filed Dec. 30, 1942. [48]

[Title of District Court and Cause.]

SPECIFICATION OF OBJECTIONS TO DISCHARGE

Comes now the Reconstruction Finance Corporation, a corporation organized and existing under and by virtue of the laws of the United States, and does hereby oppose the granting to said Bankrupt of a discharge from his debts, and specifies as grounds of objection the following:

I.

That said bankrupt has destroyed, mutilated, falsified, concealed, and failed to keep or preserve books of account and records from which the financial condition and business transactions of such bankrupt might be ascertained.

The bankrupt has incurred obligations which he is seeking to discharge totaling $1,881,830.86, arising out of transactions carried out in different lines of business.

That your objecting creditor is a creditor of said bankrupt as shown by its claim on file herein, and is included in the debts sought to be discharged by said bankrupt. That said bankrupt has heretofore acknowledged that he has destroyed his cancelled checks, and that he has no records of any kind which would indicate the amounts of money and property owned and received by him and the manner in which the same have been disposed of.

II.

That said bankrupt did, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, transfer, remove, destroy and conceal, and permit to be removed, destroyed,

and concealed his property with intent to hinder, delay or defraud his creditors; that some of such acts of transfer, removal, destruction, and concealment are constituted by the following: [53]

A. That said bankrupt did, for the purpose of hindering, delaying, and defrauding his creditors, and putting his property beyond the reach of creditors, cause to be opened and maintained a bank account in the name of F. J. Ward, in which bank account there was concealed sums of money averaging in excesss of Two Thousand Dollars ($2,000.00).

B. That said bankrupt caused to be transferred moneys belonging to him, to a bank account in the name of F. J. Ward, with intent to hinder, defraud and delay his creditors, all within twelve months preceding the filing of the petition in bankruptcy herein.

C. That said bankrupt caused to be transferred to F. J. Ward one-half of a 7-1/3% overriding royalty interest in the lease known as the "Long Beach Harbor Lease of the Interstate Investment Corporation," and which lease was acquired by the Interstate Investment Corporation under an agreement with the General Petroleum Corporation of California, and is part of a lease dated December 29, 1936, held by the General Petroleum Corporation of California in certain property located in the Rancho Los Cerritos in the Wilmington Oil Field, Long Beach, California; that said transfer was made within one year preceding the filing of the bankruptcy petition herein.

D. That said bankrupt, with intent to hinder, delay and defraud his creditors, caused one-half of a 7-1/3% overriding royalty to be concealed in the name of F. J. Ward, all as more particularly set forth in the preceding Paragraph II (C).

E. That said bankrupt caused to be transferred to F. J. Ward a royalty interest in "Abel Well No. 2" with intent to hinder, delay and defraud his creditors; and that such transfer took place within one year of the filing of the bankruptcy petition herein.

F. That said bankrupt caused to be concealed in the name of F. J. Ward the royalty described in the preceding sub-paragraph II (E), with intent to hinder, delay and defraud his creditors; and such concealment continued to within one year of the filing of these bankruptcy proceedings. [54]

G. That said bankrupt caused to be transferred to one Spencer H. Logan, two thousand shares of stock of the Beach Petroleum Company and a promissory note in the sum of $320.00, with intent to hinder, delay, and defraud his creditors; and that such transfer was made within one year preceding the filing of the petition in bankruptcy herein.

H. That said bankrupt caused to be concealed in the name of said Spencer H. Logan, two thousand shares of stock of the Beach Petroleum Company, and a promissory note of the Beach Petroleum Company for the sum of $320.00, with intent to hinder, delay and defraud his

creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

I. That said bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00, which he withdrew from the bank account of the Estate of Anne Gould Strotz, his deceased wife, for the purpose of putting the same beyond the reach of creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

J. That said bankrupt, within one year preceding the filing of the bankruptcy petition herein, failed to file any inventory and appraisement in the Estate of Anne Gould Strotz, deceased, pending in the Superior Court of Los Angeles County, for the purpose of concealing from his creditors the fact that there were assets in said estate, and the fact that his interest in said estate was of some value, all with intent to hinder, delay and defraud his creditors; and failed to file an inventory in said estate until after he had appropriated and disposed of, to his own use and benefit, moneys and property to which he was entitled as the heir of said estate.

K. That said bankrupt, with intent to hinder, delay and defraud his creditors, caused to be concealed certain assets in the name of Jay Gould; and that such concealment took place and continued to within one year of the filing of the petition in bankruptcy. [55]

III.

That said bankrupt failed to explain satisfactorily losses of assets and deficiency of assets to meet his liabilities by not giving full particulars in the following respects:

Said bankrupt has caused to be incurred liabilities totaling $1,881,830.86, and has failed to explain how he incurred such loss and has failed to explain what disposition he has made of his assets, such as moneys received by him from the estate of his deceased wife, moneys received by him from his mother, and from other sources.

IV.

That said Interstate Investment Corporation claims no interest in said 7-1/3% overriding royalty, but is merely a stakeholder receiving the money for the purpose of distributing it in accordance with the agreements hereinabove referred to.

Wherefore, your objector prays that an order be made denying the bankrupt a discharge.

RECONSTRUCTION FINANCE CORPORATION

By HECTOR C. HAIGHT

Objector

J. J. LIEBERMAN and RAPHAEL DECHTER

By R. Dechter

Attorneys for Objector.

[Verified.]

[Endorsed]: Filed Mar. 19, 1941 at 30 min. past 3 o'clock p. m. Ernest R. Utley, Referee; Meredith Keith, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [56]

[Title of District Court and Cause.]

ANSWER TO SPECIFICATION OF OBJECTION TO DISCHARGE

Comes now Harold C. Strotz, the bankrupt above named, and answering the specification of objection to discharge filed herein by Martin T. O'Brien, as Receiver for Reliance Bank & Trust Company of Chicago, Illinois; E. A. Lynch, as trustee in bankruptcy of the above named bankrupt; and John J. Mitchell and Seneca Securities Corporation, and admits, denies and alleges as follows:

I.

Answering Paragraph I thereof, denies each and every, all and singular, generally and specifically the allegations in said paragraph contained, save as herein otherwise admitted.

II.

Further answering said Paragraph I, he alleges that he is seeking a discharge of obligations totalling $2,127,641.86.

III.

Further answering said Paragraph I, he admits that the objecting creditors are creditors of said bankrupt, as shown by the Schedules and their claims on file herein, and are included in the debts sought to be discharged by said bankrupt, and admits that he has destroyed certain cancelled checks having no bearing upon the matters here involved and without any intention to conceal assets or hinder, delay or defraud creditors or any of them.

IV.

Answering Paragraph II thereof, denies each and every, all and singular, generally and specifically, the allegations therein and in the subdivisions thereof contained.

V.

Answering Paragraph III, denies each and every, all and singular, [57] generally and specifically, the allegations therein contained, save as herein otherwise admitted.

VI.

Further answering said Paragraph III, he admits that he caused to be incurred, liabilities totalling $2,127,641.86, but denies that he has failed to explain how he incurred such liabilities, or how the same were disposed or and/or lost, and denies that he has failed to explain what disposition he made of his assets, such as moneys received by him from the estate of his deceased wife, moneys received by him from his mother, and/or from other sources.

Wherefore, the bankrupt prays that the objections to his discharge be denied, and that he may be discharged from his said debts as prayed for in his petition on file herein, and for such other and further relief as may be proper in the premises.

SIMON & GARBUS
By Morton Garbus
Attorneys for Bankrupt.

[Verified.]

[Endorsed]: Filed Mar. 21, 1941 at min. past 10 o'clock a. m. Ernest R. Utley, Referee; Meredith Keith, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [58]

[Title of District Court and Cause.]

SPECIFICATIONS OF OBJECTIONS TO AMENDED PETITION FOR ARRANGEMENT UNDER CHAPTER XI, SECTION 321

Comes now the Reconstruction Finance Corporation, a corporation organized and existing under and by virtue of the laws of the United States and does hereby oppose and object to the Amended Petition for Arrangement Under Chapter XI, Section 321, filed herein by the Bankrupt, and specifies as grounds of objection the following:

I.

That said proposed Arrangement is not for the best interests of the Creditor.

II.

That said proposed Arrangement is not fair and/or equitable and/or feasible.

III.

That said Debtor, Harold C. Strotz, has been guilty of the following acts which would be a bar to the discharge of a Bankrupt:

1.

That said Bankrupt has destroyed, mutilated, falsified, concealed, and failed to keep or preserve books of account and records from which the financial condition and business transactions of such Bankrupt might be ascertained.

The Bankrupt has incurred obligations which he is seeking to discharge totaling $1,881,830.86, arising out of transactions carried out in different lines of business.

That your objecting creditor is a creditor of said Bankrupt as shown by its claim on file herein, and is included in the debts sought to be discharged by said Bankrupt. That said Bankrupt has heretofore acknowledged that he

has destroyed his cancelled checks, and that he has no records of any kind which would indicate the amounts of money [61] and property owned and received by him and the manner in which the same have been disposed of.

2.

That said Bankrupt did, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, transfer, remove, destroy and conceal, and permit to be removed, destroyed, and concealed his property with intent to hinder, delay or defraud his creditors; that some of such acts of transfer, removal, destruction, and concealment are constituted by the following:

A. That said Bankrupt did, for the purpose of hindering, delaying, and defrauding his creditors, and putting his property beyond the reach of creditors, cause to be opened and maintained a bank account in the name of F. J. Ward, in which bank account there was concealed sums of money averaging in excess of Two Thousand Dollars ($2,000.00).

B. That said Bankrupt caused to be transferred moneys belonging to him, to a bank account in the name of F. J. Ward, with intent to hinder, defraud and delay his creditors, all within twelve months preceding the filing of the petition in bankruptcy herein.

C. That said Bankrupt caused to be transferred to F. J. Ward one-half of a 7-1/3% overriding royalty interest in the lease known as the "Long Beach Harbor Lease of the Interstate Investment Corporation," and which lease was acquired by the Interstate Investment Corporation under an agreement with the General Petroleum Corporation of California, and is part of a lease dated December 29, 1936, held by the General Petroleum

Corporation of California in certain property located in the Rancho Los Cerritos in the Wilmington Oil Field, Long Beach, California; that said transfer was made within one year preceding the filing of the bankruptcy petition herein.

D. That said bankrupt, with intent to hinder, delay and defraud his creditors, caused one-half of a 7-1/3% overriding royalty to be concealed in the name of F. J. Ward, all as more particularly set forth in the preceding Paragraph 2 (C). [62]

E. That said Bankrupt caused to be transferred to F. J. Ward a royalty interest in "Abel Well No. 2" with intent to hinder, delay and defraud his creditors; and that such transfer took place within one year of the filing of the bankruptcy petition herein.

F. That said Bankrupt caused to be cancealed in the name of F. J. Ward the royalty described in the preceding sub-paragraph 2 (E), with intent to hinder, delay and defraud his creditors; and such concealment continued to within one year of the filing of these bankruptcy proceedings.

G. That said Bankrupt caused to be transferred to one Spencer H. Logan, two thousand shares of stock of the Beach Petroleum Company and a promissory note in the sum of $320.00, with intent to hinder, delay, and defraud his creditors; and that such transfer was made within one year preceding the filing of the petition in bankruptcy herein.

H. That said Bankrupt caused to be concealed in the name of said Spencer H. Logan, two thousand shares of stock of the Beach Petroleum Company, and a promissory note of the Beach Petroleum Company for the sum of

$320.00, with intent to hinder, delay and defraud his creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

I. That said Bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00, which he withdrew from the bank account of the Estate of Anne Gould Strotz, his deceased wife, for the purpose of putting the same beyond the reach of creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

J. That said bankrupt, within one year preceding the filing of the bankruptcy petition herein, failed to file any inventory and appraisement in the Estate of Anne Gould Strotz, deceased, pending in the Superior Court of Los Angeles County, for the purpose of concealing from his creditors the fact that there were assets in said estate, and the fact [63] that his interest in said estate was of some value, all with intent to hinder, delay and defraud his creditors; and failed to file an inventory in said estate until after he had appropriated and disposed of, to his own use and benefit, moneys and property to which he was entitled as the heir of said estate.

K. That said Bankrupt, with intent to hinder, delay and defraud his creditors, caused to be concealed certain assets in the name of Jay Gould; and that such concealment took place and continued to within one year of the filing of the petition in bankruptcy.

3.

That said Bankrupt failed to explain satisfactorily losses of assets and deficiency of assets to meet his liabilities by not giving full particulars in the following respects:

Said Bankrupt has caused to be incurred liabilities totaling $1,881,830.86, and has failed to explain how he incurred such loss and has failed to explain what disposition he has made of his assets, such as moneys received by him from the estate of his deceased wife, moneys received by him from his mother, and from other sources.

4.

That said Interstate Investment Corporation claims no interest in said 7-1/3% overriding royalty, but is merely a stakeholder receiving money for the purpose of distributing it in accordance with the agreements hereinabove referred to.

IV.

That the proposed arrangement is not a proper proceeding under Chapter XI of the Bankruptcy Act, said chapter not being applicable to cases involving and affecting secured as well as unsecured creditors.

Wherefore, your objector prays that the confirmation of this proposed Arrangement be refused and that an order be made dismissing the proceeding under this chapter.

RECONSTRUCTION FINANCE CORPORATION

By HECTOR C. HAIGHT

Objector

Jacob J. Lieberman

Attorney for Objector. [64]

[Verified.]

[Endorsed]: Filed Aug. 25, 1941 at 20 min. past 11 o'clock a. m. Ernest R. Utley, Referee; Meredith Keith, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [65]

[Title of District Court and Cause.]

MEMORANDUM OF DECISION

Re: Objections to Discharge Trustee vs. F. J. Ward
Meeting of Creditors as Required by Sec. 334

Appearances:

Raphael Dechter, Esq. and George T. Goggin, Esq., for the Trustee, E. A. Lynch.

Messrs. Simon and Garbus, by Morton Garbus, Esq., for the Bankrupt.

Messrs. H. L. Wyatt, H. F. Clary and Wm. J. Currer, Jr., for Certain Creditors.

Frank A. Pettibone, Esq., and J. J. Lieberman, Esq., for Reconstruction Finance Corporation.

Earl E. Moss, Esq., for F. J. Ward.

The principal question here for determination is whether or not the plan of arrangement filed herein, under and pursuant to Section 321 of Chapter XI of the Bankruptcy Act, should be approved in the face of an objection by the Reconstruction Finance Corporation (who is the largest creditor herein and whose claim totals in excess of $340,000.00) that the bankrupt has committed an act which would bar his discharge in bankruptcy and that the claim of one of the creditors voting for the plan of arrangement is barred by the statute of limitations and that without such claim, there will not be a majority in amount in favor of the plan of arrangement. All creditors have voted in favor of the plan of arrangement with the exception of the Reconstruction Finance Corporation.

The facts briefly are as follows:

The bankrupt herein filed his petition and schedules on October 22, 1940, and was adjudicated a bankrupt the

following day. The bankrupt, in his schedules, lists a total indebtedness of $1,881,830.86. Practically all of the obligations owed by the bankrupt grew out of the 1929 stock market crash and a large portion of this indebtedness arose [76] by reason of statutory liability of the bankrupt as an officer and director of national banks in Chicago.

The bankrupt is a son of Charles Nicolas Strotz, deceased, who left a large estate to his wife, Clara A. Strotz, who is still living. The bankrupt owns a contingent interest in the trust estate of his father, payable to the bankrupt in the event he should survive his mother and not otherwise. Said interest is also limited by reason of a spendthrift trust clause contained in the last will and testament of the bankrupt's father, to provide that the interest of the bankrupt in his father's estate, contingent as aforesaid, is not subject to the claims of creditors, nor shall the bankrupt have the right to anticipate, assign or encumber his interest in the income or principal of said estate. This will was probated in Cook County, Illinois, on April 30, 1928.

At the first meeting of creditors on November 19, 1940, the bankrupt was examined at length and has subsequently been examined upon numerous occasions by the trustees and creditors in an endeavor to uncover assets in this estate. As will be seen, this case started as a straight bankruptcy case and after examination of the bankrupt at the first meeting of creditors and numerous 21-A examinations, the trustee herein filed a petition against one F. J. Ward, seeking to recover certain oil properties and interest therein from Ward upon the theory that this property was concealed assets of the bankrupt. This matter has been tried and submitted for

decision. This same transaction is set forth as one of the grounds of objection to the bankrupt's discharge. I do not feel that the evidence offered by the trustee, in support of his petition, is sufficient to warrant a finding in his favor. Therefore, the petition is denied and it must necessarily follow that the objections to the discharge of the bankrupt, based upon the same ground, cannot be sustained.

While the obligations alleged by the bankrupt to be owing by him amount to almost two million dollars, yet there are only eleven claims filed herein within the time allowed for the filing of claims. The [77] total amount thereof is $974,848.64. The claim of the Estate of John T. Cunningham, deceased, which was filed in the sum of $245,811.25, was disallowed, therefore the claims which will participate in any plan of arrangement total $729,037.39.

As time went on in these proceedings, there were numerous objections filed to the bankrupt's discharge, seeking a denial of the bankrupt's discharge upon numerous grounds, including the concealment and transfer of assets within one year preceding bankruptcy with intent to hinder, delay and defraud creditors of the bankrupt.

In 1935, the bankrupt herein married Anne Gould (former wife of Jay Gould) and Anne Gould Strotz died on September 13, 1938, leaving an estate to the bankrupt. Among the various specifications of objections to the bankrupt's discharge are the following:

> "That said bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00, which he withdrew

from the bank account of the Estate of Anne Gould Strotz, his deceased wife, for the purpose of putting the same beyond the reach of creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein."

As another ground of objection it is alleged:

"That said Bankrupt did, for the purpose of hindering, delaying, and defrauding his creditors, and putting his property beyond the reach of creditors, cause to be opened and maintained a bank account in the name of F. J. Ward, in which bank account there was concealed sums of money averaging in excess of Two Thousand Dollars ($2,000.00).

That said Bankrupt caused to be transferred moneys belonging to him, to a bank account in the name of F. J. Ward, with intent to hinder, defraud and delay his creditors, all within twelve months preceding the filing of the petition in bankruptcy herein."

Before said objections to discharge were fully heard and on April 30, 1941, the bankrupt herein filed a petition for arrangement under and pursuant to Section 321, Chapter XI of the Bankruptcy Act, which plan of arrangement was promptly turned down by creditors, therefore, it is not necessary to mention its contents. On July 2, 1941, the bankrupt filed an amended plan of arrangement in which he states, among other things, that he had secured a loan of $25,000.00 from his stepson, J. Gould, Jr., which he proposed to turn over to the trustee in bankruptcy if his plan [78] of arrangement were approved. He did not secure the consent of the majority of creditors in number and amount to this plan

of arrangement. Subsequently he secured another loan from his stepson, raising the total to $32,000.00, which he now offers and which all creditors, whose claims have been proved and allowed, except the Reconstruction Finance Corporation, have accepted.

While it is true that the bankrupt herein, for the past several years, has not kept a very good set of books, and this is alleged as one of the grounds of objection to his discharge, yet I think that under all the circumstances of this case, his failure to have done so is justified.

The only grounds for objection to the bankrupt's discharge, which cause the Court any difficulty in the light of the evidence offered, arise from those objections herein which have to do with the bankrupt carrying a bank account in the name of F. J. Ward and the withdrawal of the sum of $11,500.00 from his former wife's estate. While the transcript discloses rather strong evidence pointing to a possible concealment of this money, yet there is other evidence which strongly indicates to the contrary. In determining the intent and purpose of the bankrupt in carrying this bank account in the name of F. J. Ward, the Court cannot overlook the fact that this bank account was opened as early as 1938 and was very active through the year 1939, and it seems to have been closed in August, 1940. All creditors of the bankrupt excepting his mother and aunt, both of whom were very friendly to the bankrupt and neither of whom have filed claims herein, lived outside of the state and their claims were based either upon promissory notes or judgments in the State of Illinois so that said creditors were without power to attach or levy upon any property of the bankrupt located in this state under and pursuant to the attachment laws of the

State of California which provide, in substance, among other things, that a plaintiff in an action may attach the property of a defendant as security for the satisfaction of any judgment that may be recovered, if the [79] cause of action is based upon a contract, express or implied, for the direct payment of money where the contract is made or is payable in this state, and is not secured by any mortgage, etc.

The evidence does not disclose that any judgment was rendered in this state upon any of the obligations of the bankrupt until September, 1940, and within approximately one month preceding the filing of the bankruptcy petition. Also, the withdrawal of the $11,500.00 from the estate of Mrs. Strotz was on February 26, 1940, months before any creditor of the bankrupt was in a position to tie up any of his property in the State of California either by way of attachment or levy of execution. Furthermore, it should not be overlooked that in order for a transfer or concealment of property within one year preceding bankruptcy to be a proper ground of objection to a bankrupt's discharge, such transfer or concealment of property must be done with intent to defraud the creditors of the bankrupt. I do not construe this section to mean that a person who conceals property from someone whom he honestly does not believe to be a legitimate creditor, subjects himself to the charge of concealment of assets as contemplated by the provisions of Section 14-c of subdivision 4 of the Bankruptcy Act. While the evidence does disclose that the bankrupt may have had some concern about certain individuals, there is no showing here that they were in fact creditors of the bankrupt. The evidence also discloses that much of the money involved was used to satisfy claims of creditors. While the pay-

ment of money to a creditor might be made in such a way as to constitute a voidable preference, such a transaction is distinguishable from a concealment of assets. The following facts in this case impress the Court:

Every creditor in the estate, with the exception of the Reconstruction Finance Corporation, who has a provable and allowable claim herein, has recommended the approval of the plan. Unless creditors herein receive the benefit of the $32,000.00, which the bankrupt has borrowed from his stepson, they will not receive any dividends herein. This [80] $32,000.00 will be returned to Mr. Gould if the plan is not approved and accepted. These creditors, who have recommended the plan, undoubtedly realize that this amount of money is more than the total amount of money handled through the bank account, plus the $11,500.00 which the bankrupt received from his former wife's estate. It has not been satisfactorily established by the evidence that had the bankrupt preserved all of his earnings and other property coming into his possession for creditors, after allowing himself a reasonable amount for living expenses, he would have had this amount of money on hand for creditors.

The evidence before the Court discloses that the Reconstruction Finance Corporation has co-signers on the obligation against the bankrupt herein, one being the Estate of John T. Cunningham, deceased, which is financially responsible and will be compelled to pay the claim of the Reconstruction Finance Corporation in full, whether it receives a dividend from this estate or not. The Estate of John T. Cunningham, deceased, has filed a claim herein, based upon this transaction, but its claim has been denied upon the ground that it did not have a

provable claim in bankruptcy. If this co-signer is required to pay this obligation, it will have a lesser amount to pay if a dividend is paid to the Reconstruction Finance Corporation. Therefore, under all the circumstances, I am unable to see whether the Reconstruction Finance Corporation will be damaged in any way by the approval of this plan.

The purpose of a denial of a discharge in bankruptcy, as I understand it, is to penalize the bankrupt and not creditors and to adopt the view of the Reconstruction Finance Corporation herein would, as I view it, be penalizing creditors far more than it would the bankrupt. The bankrupt is a man not far from fifty years of age and the probabilities of the bankrupt accumulating an estate in the future, upon which creditors could reap more than will be paid them under this plan, is extremely remote. In any event, all creditors who will not otherwise be paid in full, have recommended the approval of the plan. Under all the circumstances of the case, I do not feel that the evidence estab- [81] lishes a clear and convincing case of fraudulent concealment of assets as contemplated by Section 14-c of the Bankruptcy Act.

The objections to the bankrupt's discharge are overruled and the discharge of the bankrupt is granted.

Having so held in the matter of the objections to discharge, to adopt the contention of the objecting creditor that the plan cannot be approved because the claim of one of the creditors herein, voting for the plan, is barred by the statute of limitations and without said claim there is not a majority in amount in favor of the plan, would certainly be a slap in the face to all other creditors and

would deprive the very objector of a valuable right. The bankrupt has offered this money for his creditors—all of his creditors, who have no other source from which they can collect their claims, desire that the plan be approved. I would not attempt to deprive them of this valuable right. The nature of the objections involving the statute of limitations is this:—A note was given this creditor in Chicago, Illinois, where the statute of limitations upon a promissory note seems to be ten years. In California, the statute of limitations upon a promissory note is four years. The bankrupt had lived in California a little more than four years before filing his petition in bankruptcy. It is the contention of the objecting creditor that the statute of limitations of California applies and not that of Illinois. The four year period has run in California, but the ten year period has not run in Illinois.

The objections are overruled and the plan of arrangement is confirmed.

Counsel for the trustee is directed to prepare an appropriate order in conformity with this memorandum of decision.

Dated: August 7, 1942.

ERNEST R. UTLEY
Referee in Bankruptcy.

[Endorsed]: Filed Aug. 7, 1942 at 30 min. past 4 o'clock p. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk, M.

[Endorsed]: Filed Dec. 30, 1942. [82]

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The hearing on the bankrupt's amended plan of arrangement came on before the Honorable Ernest R. Utley, Referee in Bankruptcy, on the 22nd day of July, 1941, and was partially heard or continued to August 7, 1941, August 26, 1941, September 29, 1941, November 26, 1941, January 13, 1942, February 17, 1942, March 18, 1942, May 27, 1942, June 8, 1942, and July 20, 1942, the Trustee, E. A. Lynch, appearing by his attorney, Raphael Dechter; the bankrupt appearing by his attorneys, Simon & Garbus, by Morton Garbus; Reconstruction Finance Corporation, a creditor, appearing by its attorneys Frank A. Pettibone and J. J. Lieberman; F. J. Ward appearing by his attorney, Earl E. Moss; Continental Illinois National Bank and Trust Company of Chicago appearing by its attorney, Paul E. Iverson; and certain other creditors appearing by Messrs. Harold L. Watt, Harold F. Clary and Wm. J. Currer, Jr., and Grainger & Hunt, by Kyle *K.* Grainger, attorneys for such creditors; and evidence being heard on the objections of the Reconstruction Finance Corporation that the plan of arrangement should not be approved because (1) the bankrupt had committed an act which would bar his discharge in bankruptcy, and (2) the claim of one creditor voting for the plan of arrangement is barred by the statute of limitations and without such claim there would not be a majority

in favor of the plan; and evidence, both oral and written, having been introduced; and arguments having been heard, the Court renders this its Findings of Fact, Conclusions of Law, and Order based thereon, as follows:

Findings of Fact

1. That on October 22, 1940, the bankrupt herein filed a voluntary petition in bankruptcy, together with schedules attached, and on October 23, 1940, the said bankrupt was adjudicated a bankrupt. [83]

2. Schedules of the bankrupt reflect a total indebtedness of the bankrupt in the amount of $1,881,830.86. That practically all of said indebtedness resulted from financial reverses suffered by the bankrupt as a result of the stock market crash in 1929, and a large portion of such indebtedness is the result of statutory liability of the bankrupt as an officer and director of certain national banks in Chicago, Illinois.

3. The bankrupt is the son of one Charles Nicholas Strotz, deceased, who left an estate of considerable size to his wife, Clara A. Strotz, which was probated in Cook County, Illinois. The will of this deceased created a trust estate in which the bankrupt has a contingent interest, which is payable to the bankrupt in the event only that he should survive his mother, who is living. The said interest of the bankrupt is limited also by a spendthrift clause contained in the last will and testament of the bankrupt's father, which provides that the interest of the bankrupt in his father's estate is not subject to the claims

of creditors, nor shall the bankrupt have the right to anticipate, assign or encumber his interest in the income or principal of said estate.

4. A first meeting of creditors of the bankrupt was held on November 19, 1940, as well as subsequent meetings, at which the bankrupt was examined at great length. The bankrupt has been examined on numerous occasions by the Trustee and his attorneys, and by creditors, in an endeavor to uncover assets in this estate.

5. The total number of claims filed herein within the time allowed for the filing of claims amount to $974,848.64. The claim of the estate of John T. Cunningham in the amount of $245,811.25 has been previously disallowed, and the total amount of the claims which will participate in any plan of arrangement is $729,037.39.

6. The Reconstruction Finance Corporation, in objecting to the amended plan, for one of its grounds to objections has set forth that the bankrupt had transferred certain oil properties to one F. J. Ward and that said property constituted assets of the bankrupt which were concealed from his creditors. A petition has been filed by the Trustee [84] against the said F. J. Ward for the purpose of recovering such oil properties and interests, which petition is based upon the theory that the property constitutes concealed assets of the bankrupt. This matter has been tried and submitted to this Court for decision. The Court finds that said transfer from the bankrupt to F. J. Ward was not fraudulent and was not made with intent to hinder, delay and defraud the creditors of the bankrupt.

7. The Court finds that it is not true that said bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00.

8. The Court finds that it is not true that said bankrupt did, for the purpose of hindering, delaying and defrauding his creditors, or for the purpose of putting his property beyond the reach of the creditors, cause to be opened and maintained a bank account in the name of F. J. Ward; that it is not true that said bankrupt caused to be transferred moneys belonging to him to a bank account in the name of F. J. Ward, with intent to hinder, delay and defraud his creditors, within the twelve months preceding the filing of the petition in bankruptcy herein.

9. The Court finds that at all times herein, the bankrupt conducted himself in such a manner as was inconsistent with an intent to hinder, delay or defraud his creditors. The evidence discloses that the bankrupt made every effort to pay such creditors as he deemed to be legitimate, and made no effort to conceal any of his assets from any creditor whom he honestly believed was his creditor.

10. The Court finds that it is true that the bankrupt has failed to keep books of account or records from which his financial condition and business transactions might be ascertained, but this Court deems that such failure is justified under all the circumstances of the case, and particularly in view of the fact that the bankrupt for many years prior to the filing of the petition in bankruptcy was not engaged in any particular line of business and that the transactions carried on by him were not

such as to require the keeping of a set of books or records. [85]

11. The Court finds that it is not true that the bankrupt caused to be transferred to one Spencer H. Logan two thousand shares of Beach Petroleum Company stock and a promissory note in the sum of $320.00, with intent to hinder, delay and defraud his creditors, or that such transfer was made within one year preceding the filing of the petition in bankruptcy herein.

12. The Court finds that the failure of the bankrupt to file any inventory and appraisement in the estate of Anne Gould Strotz, deceased, in the Superior Court of Los Angeles County, was not by reason of any intent on the part of the bankrupt to hinder, delay and defraud his creditors.

13. That it is not true that the bankrupt caused any assets to be concealed in the name of Jay Gould, Jr., within one year prior to the filing of the petition in bankruptcy, with intent to hinder, delay and defraud his creditors.

14. That among the objections to the discharge of the bankrupt was the allegation that he had failed to explain satisfactorily losses of assets and deficiency of assets to meet his liabilities in that he had failed to explain how he had incurred liabilities totaling $1,881,830.86 and what disposition he had made of his assets, such as moneys received by him from the estate of his deceased wife, from his mother, and from other sources. The Court finds that the liabilities of the bankrupt have been satisfactorily explained as financial reverses incurred in the stock market crash of 1929. The Court finds that the evidence is in-

sufficient to warrant the conclusion that the bankrupt has not satisfactorily explained the disposition of moneys received by him from the estate of his deceased wife, from his mother, and from other sources.

15. The Court finds that every creditor who has a provable and allowable claim herein, has recommended the approval of the plan submitted by the bankrupt whereunder the creditors would receive $32,000.00 which the bankrupt has borrowed from his step-son, except that the Reconstruction Finance Corporation alone has objected to the approval of said plan. The Court finds that the Reconstruction Finance Corporation has other [86] means of realization of its claim against the bankrupt herein, one of the co-signers of said obligation being the estate of John T. Cunningham, deceased, which is financially responsible and which will be compelled to pay the claim of the Reconstruction Finance Corporation in full, irrespective of the outcome of this proceeding. The estate of John T. Cunningham, deceased, has filed a claim herein, but its claim has been denied upon the ground that it does not constitute a provable claim in bankruptcy. The Court finds that the Reconstruction Finance Corporation is amply assured of receiving payment in full of its claim and will not be affected by the plan, whether approved or not. The Court finds that there has been no sufficient evidence to warrant the denial of the discharge of the bankrupt. The Reconstruction Finance Corporation objects to the approval of the plan on the ground that a majority of the creditors have not approved the same, and as the basis of said contention maintains that the claim of one of the creditors herein voting for the plan, to-wit, that of Eugenia Vollentine, is barred

by the statute of limitations, and if disallowed on said ground there is not a majority in amount in favor of the plan. The Court finds that the note of the bankrupt held by said Eugenia Vollentine was given to her in Chicago, Illinois, and that the statute of limitations upon a promissory note in Illinois is ten years. The Court finds that the parties to such transaction intended to be governed by the laws of the State of Illinois wherein the transaction took place, and that under the statute of limitations of Illinois (which is applicable herein) the right of action on said promissory note has not been barred by the statute of limitations.

16. The Court finds that the claim of the Continental Illinois National Bank and Trust Company of Chicago is that of an unsecured, general creditor.

Based Upon the Foregoing Findings of Fact, the Court Makes Its Conclusions of Law:

1. The Court concludes that the evidence introduced in support of [87] the objections to the discharge of the bankrupt is insufficient to warrant denial of the bankrupt's discharge, and such objections are therefore not grounds for the refusal by this Court of approval of a plan which appears to be for the best interests of the creditors herein.

2. The Court concludes that a majority of the creditors in number and amount have duly approved the proposed plan, and the plan appearing to be fair and reasonable and for the best interests of the creditors, the same should be approved by the Court.

3. The Court concludes that the sole creditor objecting to the approval of the plan is not entitled to bar the

approval of the plan in view of the fact that the approval of the plan would not affect said creditor, there appearing to be co-obligators on said indebtedness from whom said claimant will received satisfaction in full.

Based upon said Findings of Fact and *Conclusion* of Law,

It Is Ordered that the amended plan of the bankrupt herein be and the same is hereby approved; that the sum of $32,000.00 offered in the plan be declared assets of the above estate, subject to distribution to creditors whose claims have been filed and allowed herein, after deducting therefrom such sums as the Court may fix and allow and order paid as fees, costs and expenses of administration; that Harold C. Strotz, as debtor, be released and discharged from the claims of indebtedness scheduled by him herein; that the funds heretofore received by the Trustee in connection with the litigation against F. J. Ward be surrendered to F. J. Ward; that any and all other moneys or assets remaining at this time in the possession of the Trustee, other than said sum of $32,000.00, be released to the bankrupt and debtor herein; that the Trustee be and he hereby is directed to dismiss the action heretofore commenced against Spencer H. Logan, as well as any other proceedings that may be pending, heretofore instituted by the Trustee.

Dated this ..... day of September, 1942.

.....

Referee in Bankruptcy.

[Endorsed]: Filed Sep. 17, 1942 at min. past 5 o'clock p. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk. C.

[Endorsed]: Filed Dec. 30, 1942. [88]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, AND PETITION FOR REOPENING OF HEARINGS FOR SUBMISSION OF ADDITIONAL TESTIMONY

Comes now Reconstruction Finance Corporation, a claimant in the above entitled matter by its attorneys, Jacob J. Lieberman and Frank A. Pettibone, and

Objects to the Findings of Fact, Conclusions of Law, and Order in the following respects and upon the grounds hereinafter set forth:

I.

1. Objects to that portion of Finding No. 2 reading: "That practically all of said indebtedness resulted from financial reverses suffered by the bankrupt as a result of the stock market crash in 1929, and a large portion of such indebtedness is the result of statutory liability of the bankrupt as an officer and director of certain national banks in Chicago, Illinois," for the reason and upon the ground that same is irrelevant, incompetent and immaterial, and because the facts are and said Findings are inaccurate and incomplete, unless they show the facts to be that the claim of Reconstruction Finance Corporation is based upon a note, dated August 12, 1930, signed by the bankrupt and others for the sum of Two hundred ten thousand and 00/100 Dollars ($210,000.00), upon which note the bankrupt and said others received from the National Bank of the Republic of Chicago, Illinois, the payee of the note, a check for Two hundred ten thousand and

00/100 Dollars ($210,000.00), which check was used by the bankrupt and said other signers of the note to purchase certain slow assets of the Madison Square Bank of which the signers of the note were then directors.

2. Objects to Finding No. 3 because same is incomplete, unless same show that bankrupt's mother, who is living, is over the age of seventy, and that from said trust said mother of bankrupt is to receive the income for life, and upon her death, the corpus thereof is to be distributed in [89] equal shares to the three children of said testator, of whom bankrupt is one.

3. Objects to Finding No. 7 for the reason that said Finding should show and find that bankrupt concealed the sum of Eleven thousand, five hundred and 00/100 Dollars ($11,500.00), although Referee finds that such concealment was not for the purpose of hindering, delaying and defrauding his creditors. As the Finding reads now, it would appear to be a Finding that the said Eleven thousand, five hundred and 00/100 Dollars ($11,500.00) was not even concealed.

4. Objects to Finding No. 8, unless same be so worded as to find that bankrupt caused moneys belonging to him to be transferred to a bank account in the name of F. J. Ward, although the Court finds such transfer not to have been for the purpose of hindering, delaying and defrauding creditors, or putting his property beyond the reach of the creditors, and said Finding should show that bankrupt did cause to be opened and maintained a bank account in the name of F. J. Ward.

5. Objects to Finding No. 11, unless same be made to read that it is true that bankrupt caused to be trans-

ferred to one Spencer H. Logan two thousand (2,000) shares of Beach Petroleum Company stock and a promissory note in the sum of Three hundred twenty and 00/100 Dollars ($320.00), although Referee finds such transfer to have been made without intent to hinder, delay and defraud creditors, etc.

6. Objects to Finding No. 13 unless same be made to read that it is true that bankrupt caused assets to be placed and concealed in the name of Jay Gould, Jr., within one (1) year prior to the filing of the petition in bankruptcy, although Referee finds same to have been done without intent to hinder, delay and defraud creditors.

7. Objects to that portion of Finding No. 14 in which the Court finds that the liabilities of the bankrupt have been satisfactorily explained as financial reverses incurred in the stock market crash of 1929, on the ground that same is irrelevant, incompetent and immaterial, and that the cause of the losses is no explanation of how the liabilities [90] were incurred and what disposition was made of bankrupt's assets or how the losses were sustained.

8. Objects to Finding No. 15 on the ground that it finds that Reconstruction Finance Corporation has other means of realization of its claim against bankrupt herein, etc., which is irrelevant, incompetent and immaterial, and is objected to on said ground. Objection is made to the Finding in said numbered Finding that the Estate of John T. Cunningham, deceased, one of the co-signers of the obligation upon which objector's claim is based, is financially responsible, and will be compelled to pay the claim of Reconstructions Finance Corporation in full, irrespective of the outcome of this proceeding, upon the

ground that same is irrelevant, incompetent and immaterial, and on the further ground that the facts are that the Cunningham Estate has not sufficient assets to pay objector's claim in full; that it is estimated that the assets of said estate, as nearly as can be ascertained at the present time, are approximately Three hundred thousand and 00/100 Dollars ($300,000.00); that other claims have been filed and allowed against the estate; that objector's claim, with interest, at the present time amounts to approximately Three hundred sixty thousand and 00/100 Dollars ($360,000.00); that even though it prevails against said estate and collects therefrom, it will have a deficiency on its claim of approximately Sixty thousand and 00/100 Dollars ($60,000.00) or more; that the right of objector to a claim against said estate is being contested in the Circuit Court of Cook County, Illinois on appeal from the probate court thereof; that the estate and the beneficiaries thereof are taking the position that the judgment obtained on the note extinguished the liability on said note, and that said note was merged in the judgment, and that the judgment, being against more than one, is a joint judgment under the law; that the common law prevails and that under the common law, upon the death of a joint judgment debtor or any other joint obligor, the estate is not liable on the obligation, the liability then being that of the surviving joint obligor, and that if the estate pre- [91] vails in such contention, objector may not make any recovery in said estate. For the same reasons, objection is hereby made to that portion of said Finding which finds that objector is amply assured of receiving payment in full of its claims and will not be affected by the plan whether approved or not.

Objection is further made to that portion of said Finding No. 15 which finds that the parties to the transaction intended to be governed by the State of Illinois where the transaction took place, and that under the Statute of Limitations of Illinois, the right of action on the Vollentine promissory note has not been barred for the reason and upon the ground there is no evidence in the record as to any intention, the only evidence respecting said note being the Vollentine claim itself, and that portion of said Finding which finds that the Statute of Limitations of Illinois is applicable herein is contrary to the law and facts since the law of the Forum prevails, and under the law of the State of California, the said claim is barred even though it might not as yet be barred in a Forum in the State of Illinois, and for the further reason that such Finding or any Finding as to whether or not it is barred in the State of Illinois is under the circumstances irrelevant, incompetent and immaterial.

Objection is further made to each and all of the Findings hereinbefore objected to on the ground that same are not based upon and are contrary to the record and contrary to the law.

II.

Objection is hereby made to each and all of the Conclusions of Law, for the reason and upon the ground that they are not nor is any of them based upon the record, and each and all thereof is and are contrary to the record and contrary to the law.

III.

Objection is made to the proposed Order for the reason and upon the ground that same is and each and every

part thereof is contrary to the record, not based thereon, not justified thereby, and contrary to the law. [92]

IV.

Said Reconstruction Finance Corporation does hereby petition for a re-opening of this matter and further hearing and rehearing thereof, unless the portions objected to hereinabove be stricken. If they be or any portion thereof be retained in said Findings, then said petition is made for such rehearing and further hearing and reopening in order to permit petitioner to introduce into the record the true facts hereinabove set forth (same being underscored hereinabove), to make certain that said facts be in the record if not already contained therein and in the interests of equity and justice so that any decision made herein may be based upon true and correct facts and not upon error. In lieu of such rehearing or renewed or additional hearing, petitioner proposes that it be stipulated that the said facts be made a part of the record and treated as introduced in evidence herein.

JACOB J. LIEBERMAN and
FRANK A. PETTIBONE
By Jacob J. Lieberman
Attorneys for Claimant and Objector, Reconstruction Finance Corporation

Dated at Los Angeles, California, this 18th day of September, 1942.

[Endorsed]: Filed Sep. 19, 1942 at 55 min. past 11 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk. g.

[Endorsed]: Filed Dec. 30, 1942. [93]

[Title of District Court and Cause.]

OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, UPON OBJECTIONS OF R. F. C. TO BANKRUPT'S DISCHARGE AND TO CLAIM OF EUGENIA VOLLENTINE

Comes now Reconstruction Finance Corporation, the objecting creditor in the above entitled matter, by its attorneys, Jacob J. Lieberman and Frank Michels, and

Objects to the findings of fact, conclusions of law, and order in the following respects and upon the following grounds hereinafter set forth:

I.

Objects to that portion of finding number 5 reading: "The total amount of the claims which will participate in any plan of arrangement is $729,037.39." Included in said amount is the claim of Eugenia Vollentine in the sum of $168,410.85 which was at the time of the filing of the petition in bankruptcy herein barred by the Statute of Limitations of the State of California as is hereinafter more particularly set forth; that said portion of said findings should read: "The total amount of claims which will participate in any plan of arrangement is $560,626.54."

II.

Objects to finding number 6; that said finding should be as follows: "The Court finds that said plan of arrangement is not for the best interests of the creditors of the bankrupt." It is stated in paragraph 3 of said findings that the bankrupt has a contingent interest in a trust estate created by his father which terminates upon the

death of his mother now 70 years of age, upon the happening of which event the bankrupt will receive one-third of the corpus of said estate. It appears from the evidence that said trust estate now exceeds the sum of one million dollars. The creditors would by said plan of arrangement be prevented from proceeding against said fund in the event that [94] said bankrupt survives his mother.

III.

Objects to finding 7. Said finding should read as follows:

> "7. The Court finds that said plan is not fair and equitable and is not made in good faith; that the plan was not offered until after objections were filed to the discharge of said bankrupt and was filed more than one year after the adjudication of said bankrupt and was for the purpose of avoiding the effect of the acts committed by him which would operate as a bar to his discharge."

IV.

Objects to finding 8. Said finding is against the uncontradicted evidence and admissions of the bankrupt made in said proceeding as is hereinafter more specifically set forth.

V.

Objects to findings 9 and 10 wherein it is stated that the failure of the bankrupt to keep books of account or records and the fact that the bankrupt acknowledged he had destroyed his cancelled checks is excusable under all the circumstances of the case. There should be substituted for said findings the following:

"The Court finds that the failure of the bankrupt to keep books of account and records from which his financial condition and business transactions might be ascertained and the fact that the bankrupt acknowledged he had destroyed his cancelled checks monthly was not justified in view of the fact that the bankrupt within a period of several years immediately preceding the filing of said petition in bankruptcy maintained a bank account in the name of F. J. Ward for the purpose of concealing the funds therein from his creditors and hindering and delaying his creditors."

VI.

Objects to finding 11. Said finding is against the uncontradicted evidence and admissions of the bankrupt made in said proceeding as is [95] hereinafter more specifically set forth.

VII.

Objects to findings 12 and 13. Said findings are in conflict with the following uncontradicted evidence and admissions made by the bankrupt. The bankrupt testified:

(Vol. I, p. 30) "I had a bank account in the Security-First National Bank of Los Angeles, Hollywood and Cahuenga Branch. The account was in the name of F. J. Ward and checks were signed by myself for Mr. Ward."

(Vol. I, p. 39). "This account was closed in August or September of 1940."

(Vol. I, p. 94): "The reason for that was that I was continually harassed by sheriff's orders or something like that, and I was just afraid to try and do anything."

(Vol. I, p. 98) "Yes, when did they start harassing you so you could not do business? A. I consider they have been doing it ever since 1930."

(Vol. I, p. 107-108) "Q. You had an account in the Name of F. J. Ward? A. That is right. Q. At the Security-First National Bank in Hollywood? A. Hollywood and Cahuenga. Q. What did you use that account for, the account in the name of F. J. Ward? A. I used it as a banking account. Q. To pay your personal expenses and things of that kind? A. Yes. Q. To pay your department store accounts? A. Yes. Q. When did you open the account in the name of F. J. Ward? A. The bank has the record— Q. I want your recollection. A. I think I opened it in the fall of 1938. The Referee: What was the purpose of carrying the account in the name of F. J. Ward? A. Because I was having a lot of trouble at the time with my former wife and I had had my bank account attached prior to that. so I carried it in his name."

(Vol. II, p. 17). "On or about December, 1939, I had an average balance in my bank account in the name of F. J. Ward, in excess of [96] $1,000.00." The account of the bankrupt in the name of F. J. Ward, commencing December 13, 1938, up to the date of the closing of the account on August 30, 1940, consisting of four ledger sheets and two signature cards was offered in evidence as trustee's Exhibit No. 2.

(Vol. II, p. 23) "On or about September 6, 1939, I was served with a summons and complaint in an action filed in the Superior Court of Los Angeles

> County, No. 444,462, entitled Martin T. O'Brien as receiver of the Reliance Bank and Trust Company, plaintiff, versus Harold C. Strotz, defendant."

On August 21, 1940, Judge Wilson of the Superior Court in the O'Brien suit issued an order upon the bankrupt to show cause why he should not be restrained from transferring, hypothecating, or creating any lien upon any and all moneys, credits, or other things of value owned by or in possession or under the control of the Security-First National Bank of said Harold C. Strotz (Vol. II, p. 39-40), was returnable August 30, 1940, and was served on the bankrupt August 28, 1940. At the time of the service of the rule on the bankrupt on August 28, 1940, there was a balance in the "Ward" bank account of $676.57. On September 6, 1940, bankrupt filed his affidavit in opposition to the order to show cause, in which he stated that he did not have a bank account at the Security-First National Bank of Los Angeles at the time of the service of the order (Vol. II, p. 39-40).

F. J. Ward testified (Vol. I, p. 181) that Strotz told him "there was a possibility of certain moneys of his being attached and he asked me if I would object to having that account and I said no."

During the course of the hearing the Referee made the following statements:

> (Vol. II, p. 156) "The Referee: I will tell you frankly the testimony thus far that impresses me in this matter, and the only testimony that impresses me is the fact these men were very close friends, lived together in the one house, that [97] Mr. Ward did

permit Mr. Strotz to use his name to carry a bank account in, and that it was being done for the purpose of keeping funds away from Mr. Strotz's creditors, backed by the further fact that Mr. Ward knew Mr. Strotz was in financial difficulty and the fact they carried on these transactions, together with the close relationship shown by the transactions in the oil venture—referring to the two covered by Respondent's Exhibits A and B, and shown by some of the contracts relating to the same transaction."

(Vol. II. p. 164) "The Referee: The testimony shows here that Mr. Strotz wanted to do something to prevent creditors from reaching his money, and Mr. Ward in 1938 was perfectly willing to go along with him and cooperate with him in that manner, and the Court can take that into consideration in determining whether or not he was willing to assist Mr. Strotz in protecting himself in some other matters. While you can argue the matter, I am afraid you cannot make any impression on the Court on that point."

(Vol. II, p. 165) "The Referee: That may be the testimony but the view of the Court from the testimony I have heard is I am impressed with this, that Mr. Strotz was not worried about his wife attaching him one-half as much as he was about someone else attaching. Mr. Garbus: There wasn't another single solitary creditor mentioned at the time, or evidence that another creditor existed at that time. The Referee: The Court cannot accept that viewpoint."

(Vol. II, p. 169-172) "The Referee: Well, Mr. Strotz testified here, and he has been very frank about it, in substance that he put this money where it could not be attached. Mr. Garbus: Which money is that? The Referee: Put it in Mr. Ward's bank account. Mr. Garbus: There wasn't any money then—just a few hundred dollars. The Referee: Any other construction of his testimony in that regard would certainly be a very, very strange construction." [98]

"Mr. Garbus: Yes, but this reflects upon the bankrupt, and you know very well if it is to be brought in on the charge of fraud on the part of the bankrupt I will resist it to the last, and every attorney should. Your Honor, Mr. Strotz testified he opened this bank account solely for the purpose of giving him the opportunity not to be harassed by attachments. That is true. He made the general statement but he had in his mind his ex-wife, but that is not a wrong as far as his creditors— The Referee: Let us see whether or not it is. If he did put this money in the bank so he could have paid creditors and had used it for that purpose then there might be something to your argument, but where he carries the bank account and uses it for every other conceivable purpose other than that I think a different inference has to be drawn from it. Mr. Garbus: Your Honor, would your Honor say then that the law is a man who is in debt must wear his heart on his sleeve, as far as his creditors are concerned? That is not the law. The law is a man in debt has a right to prefer one creditor over another, he has the right to invest

his money in a speculation, he has a right to buy things he needs, an automobile and clothing— The Referee: If there has been any kind of preferring one creditor over another I have not seen it because I have not seen any evidence where any creditor got money, so there is no preferring one creditor over another. They have been all very much in the same class, they have not gotten anything, as far as the testimony is concerned."

There should be substituted for said findings the following:

"That the bankrupt from October 22, 1939, until August 30, 1940, being within a period of twelve months immediately preceding the filing of the petition in bankruptcy, maintained a bank account in the name of F. J. Ward for the purpose of concealing from his creditors money deposited and maintained therein with intent of hindering, delaying, and defrauding his creditors, and [99] putting his property beyong the reach of his creditors, in which said bank account during said period the bankrupt made 34 deposits aggregating $16,910.77 and issued 183 checks aggregating $17,341.30."

VIII.

Objects to findings 20 and 21. Said findings are contradicted by the following uncontradicted evidence and admissions made by the bankrupt. Anne Gould Strotz, the wife of the bankrupt, died September 13, 1938 (Vol. I, p. 36). The bankrupt was appointed executor for her estate by the Superior Court of Los Angeles, California, October 25, 1938, and no inventory was filed until March 12, 1940 (Vol. I, p. 309). From the time of his appoint-

ment as executor until March 1940, the bankrupt received, as executor of the estate, approximately $18,000 (Vol. I, p. 36). The bankrupt testified as follows:

> (Vol. I, p. 140) "I received the first of this money in 1939, and the last of it in February, 1940. With this money, I went to Honolulu and to New York and to Chicago, and I tried to make arrangements to settle my other accounts."
>
> (Vol. I, p. 141) "Most of this money I kept in cash. I may have deposited one or two thousand dollars in the account I had in the name of F. J. Ward. When I say I kept it in cash I mean cashier's checks drawn on the Security-First National Bank. I received the money at different times. I used some of it for living expenses and some for trips."
>
> (Vol. I, p. 304-305). "Mr. Dechter: Q. Mr. Strotz, I will show you a letter written by your counsel, Simon and Garbus, to William J. Currer dated October 23, 1939 in re Martin T. O'Brien, and so forth, verus Harold C. Strotz.
>
> "'Dear Mr. Currer: This is to confirm our understanding that the defendant in the above-entitled action need not answer the complaint on file herein or otherwise plead in said action until you give to this office notice requesting him so to do. We understand that in the meantime you will advise this office [100] as to the attitude of your client in extending the prosecution of this action to preparations for settlement of this matter. Yours very truly, Simon and Garbus by Morton Garbus.'

Does that refresh your memory you withdrew this $11,500 after this action was pending against you? Mr. Garbus: What is the date of that letter? A. October 23, 1939. Mr. Garbus: That is nearly six months, isn't it? Mr. Dechter: Will you read the question? (The reporter read the pending question.) A. Well, of course I withdrew it afterwards, if that is the date of the letter."

(Vol. I, p. 308-309). "Mr. Dechter: Q. Mr. Strotz, I will show you the ledger sheet of the Security-First National Bank, Hollywood and Cahuenga Branch, which shows that you made the following deposits to the account of the estate of *Ann* G. Strotz: October 29, 1938, $1,562; November 28, 1938, $447.77; April 21, 1939, $3,000.00; June 13, 1939, $15,000.00.

The witness calls my attention to the fact I missed a dollar deposit on May 5, 1939. June 29, 1939, $5,000.00; November 9, 1939, $5.87: December 14, 1939, $300.00; February 26, 1940, $16,948.12; or a total of approximately a sum in excess of $40,000.00 between those dates."

(Vol. II, p. 45-46) "I issued a check on the Hollywood and Cahuenga Branch of the Security-First National Bank of Los Angeles to the estate of Anne Gould Strotz by Harold C. Strotz, executor, for $11,500.00. payable to the order of myself. I took this check and received in return for the same cashier's checks aggregating the sum of $11,500.00."

(Vol. II, p. 49) "I took this money out to pay certain bills, and I drew it out because I will admit

I was afraid my bank account might be attached in some form or other."

(Vol. II, p. 50) "At the time I drew this money from the estate account, I kept it in cashier's checks. I had this checking account in the name of F. J. Ward." [101]

(Vol. II, p. 51) "I have been insolvent since December, 1929."

(Vol. II, p. 95) Witness shown check dated October 20, 1939, drawn on the estate of Anne G. Strotz account for $1,000.00 and testified (p. 96) that it was drawn without a court order. The check was made payable to Harold Strotz.

(Vol. II, p. 97) "I don't know what I did with that particular money."

(Vol. II, p. 98) Bankrupt shown check of estate dated July 1, 1939, payable to bankrupt in the sum of $4,000.00."

(Vol. II, p. 99) "I did not have a court order from the probate court of Los Angeles County authorizing that withdrawal. I believe I took $2,000.00 of this money with me to Honolulu. I have no record of what I did with it. This withdrawal of $4,000.00 on July 1, 1939, was made after I deposited $5,000.00 in the account of the estate of Anne Gould."

(Vol. II, p. 102) "I was the residuary beneficiary of the estate and withdrew funds from the estate ac-

count from time to time and used those funds for my personal benefit."

(Vol. II, p. 103) "The estate of Anne Gould was opened in October, 1938, and no inventory was filed until March 12, 1940."

(Vol. II, p. 113-114-115-116) Bankrupt shown check (trustee's Exhibit No. 6) for $11,500.00 drawn on the estate account of Anne G. Strotz payable to bankrupt and bankrupt testified that in exchange for this check he received the following cashier's checks, dated February 26, 1940: Check No. 777,205 for $3,600.00 payable to Harold C. Strotz. Check No. 777,207 for $1,500.00 payable to Harold C. Strotz. Check No. 777,204, payable to Sidney M. Strotz, brother of bankrupt for $3,000.00. Check No. 777,-201 payable to Bekins Van & Storage Company for $600.00. Check No. 777,202 payable to Guy M. Peters for $500.00. Check No. 777,203 payable to Hamilton Vose, Junior, for $500.00. These checks total $9,700.00. "I don't remember whether I received the balance of the $11,500.00 [102] in cash. The check No. 777,205 for $3,600.00 was cashed by me March 1, 1940."

(Vol. II, p. 116) "With reference to the check made out to my brother, Sidney M. Strotz for $3,000.00, within a week after the check was issued, I received in return for that check the personal check

of my brother for $3,000.00 drawn on the First National Bank of Chicago."

(Vol. II, p. 177) "When the personal check for $3,000.00 was received back from my brother, I deposited it in the bank account I had in the name of F. J. Ward. When I received this personal check of my brother's for $3,000.00 he said he would not accept it as I needed it more than he did. I sailed for Honolulu July 27, 1939, and returned September 13, 1939."

Said findings should read as follows:

"20. That said bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00, which he withdrew from the bank account of the estate of Anne Gould Strotz, his deceased wife, for the purpose of putting the same beyond the reach of creditors; and that such concealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

"21. That said bankrupt, within one year preceding the filing of the bankruptcy petition herein, failed to file any inventory and appraisement in the estate of Anne Gould Strotz, deceased, pending in the Superior Court of Los Angeles County, for the purpose of concealing from his creditors the fact that there were assets in said estate, and the fact

that his interest in said estate was of some value, all with intent to hinder, delay and defraud his creditors; and failed to file an inventory in said estate until after he had appropriated and disposed of, to his own use and benefit, moneys and property to which he was entitled as the heir of said estate." [103]

IX.

Objects to that portion of finding 23 which reads as follows:

"and the Court further finds that since August 12, 1930 to the date of the filing of the petition in bankruptcy herein, October 22, 1940, the bankrupt had and received no assets or money of any consequence excepting the sum of Eleven thousand five hundred and 00/100 Dollars ($11,500.00) as heir of the estate of his deceased wife, Anne Gould Strotz, which sum was expended by him for his living expenses and to meet certain of his obligations, as aforesaid."

Said finding is contradicted by the admissions of the bankrupt and uncontradicted evidence hereinbefore set forth.

X.

Objects to finding 25 for the reason that by the admissions of the bankrupt and uncontradicted evidence the objections of the Reconstruction Finance Corporation are amply sustained.

XI.

Objects to finding 26. There should be included in said finding the following:

"Said claim of Eugenia Vollentine is based upon five notes dated January 14, 1932, due two, three, and four years after date. In the State of California the Statute of Limitations upon a note is four years. The bankrupt for a period of more than four years immediately preceding the filing of his petition in bankruptcy was a resident of the State of California. It is the settled law of the State of California that an action brought on a note in the State of California against a resident of the State of California, executed in a foreign state, is controlled by the California four-year Statute of Limitations. Sullivan vs. Shannon, 25 Cal. App. 2d 422, 77 Pac. 2d 422, and cases therein cited." [104]

Objects to conclusions of law 1 and 2 for the reason that they are predicated on an erroneous statement of facts.

JACOB J. LIEBERMAN
Jacob J. Lieberman

FRANK MICHELS
Frank Michels

Attorneys for Reconstruction Finance Corporation.

[Endorsed]: Filed Oct. 20, 1942 at min past 9 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk. M.

[Endorsed]: Filed Dec. 30, 1942. [105]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed that the examinations under Section 21a and the hearing on the Trustee's petition against F. J. Ward were submitted to the Referee at the time of the submission of the Objections to the Discharge and Objections to Confirmation and Approval of Plan of Arrangement, and it was stipulated, and approved by the Court, that no further hearing should be had and no additional evidence or testimony need be introduced in connection with said submission, and that the Referee could decide the matter submitted based upon the relevant and material evidence examinations and testimony heretofore introduced in connection with the said proceedings under Section 21a and the hearing on the Trustee's Petition against F. J. Ward.

Dated: October 29, 1942.

SIMON & GARBUS
By Morton Garbus
Morton Garbus
Attorney for Bankrupt

JACOB J. LIEBERMAN and
FRANK MICHELS,
Attorneys for Reconstruction Finance Corporation, Objector.
By JACOB J. LIEBERMAN
Jacob J. Lieberman.

[Endorsed]: Filed Nov. 13, 1942 at min. past 9 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [106]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated and agreed that the examinations under Section 21a and the hearing on the Trustee's petition against F. J. Ward were submitted to the Referee at the time of the submission of the Objections to the Discharge and Objections to Confirmation and Approval of Plan of Arrangement, and it was agreed that all of said evidence and examinations and testimony were to be considered in connection with and as evidence upon said Objections to Discharge and Objections to Confirmation and Approval of Plan of Arrangement.

RAPHAEL DECHTER
Attorney for Trustee in Bankruptcy

R. DECHTER
Raphael Dechter.

JACOB J. LIEBERMAN and
FRANK MICHELS,
Attorneys for Reconstruction Finance Corporation,
Objector.

By Jacob J. Lieberman
Jacob J. Lieberman.

[Endorsed]: Filed Nov. 13, 1942 at min. past 9 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk. M.

[Endorsed]: Filed Dec. 30, 1942. [107]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSION OF LAW, AND ORDER

The hearing on the bankrupt's amended plan of arrangement came on before the Honorable Ernest R. Utley, Referee in Bankruptcy, on the 22nd day of July, 1941, and was partially heard or continued to August 7, 1941, August 26, 1941, September 29, 1941, November 26, 1941, January 13, 1942, February 17, 1942, March 18, 1942, May 27, 1942, June 8, 1942, and July 20, 1942, the Trustee, E. A. Lynch, appearing by his attorney, Raphael Dechter; the bankrupt appearing by his attorneys, Simon & Garbus, by Morton Garbus; Reconstruction Finance Corporation, a creditor, appearing by its attorneys Frank A. Pettibone and J. J. Lieberman; F. J. Ward appearing his his attorney, Earl E. Moss; Continental Illinois National Bank and Trust Company of Chicago appearing by its attorney, Paul E. Iverson; and certain other creditors appearing by Messrs. Harold L. Watt, Harold E. Clary and Wm. J. Currer, Jr., and Grainger & Hunt, by Kyle Z. Grainger, attorneys for such creditors; and evidence being heard on the objections of the Reconstruction Finance Corporation that the plan of arrangement should not be approved because (1) the bankrupt had committed an act which would bar his discharge in bankruptcy, and (2) the claim of one creditor voting for the plan of arrangement is barred by the Statute of Limitations and without such claim there would not be a majority in favor of the plan; and evidence, both oral and written, having been introduced; and arguments having been heard, the Court renders this its Findings of Fact, Conclusions of Law, and Order based thereon, as follows:

Findings of Fact

1. That on October 22, 1940, the bankrupt herein filed a voluntary petition in bankruptcy, together with schedules attached, and on October 23, 1940, the said bankrupt was adjudicated a bankrupt. [108]

2. Schedules of the bankrupt reflect a total indebtedness of the bankrupt in the amount of $1,881,830.86. That practically all of said indebtedness resulted from financial reverses suffered by the bankrupt as a result of the stock market crash in 1929, and a large portion of such indebtedness is the result of statutory liability of the bankrupt as an officer and director of certain national banks in Chicago, Illinois; that the claim of Reconstruction Finance Corporation is based upon a note, dated August 12, 1930, signed by the bankrupt and others for the sum of Two hundred ten thousand and 00/100 Dollars ($210,000.00), upon which note the Madison Square Bank of which the signers of the note and the bankrupt were then directors received from the National Bank of the Republic of Chicago, Illinois, the payee of the note, a check for Two hundred ten thousand and 00/100 dollars ($210,000.00).

3. The bankrupt is the son of one Charles Nicholas Strotz, deceased, who left an estate of considerable size to his wife, Clara A. Strotz, which was probated in Cook County, Illinois. The will of this deceased created a trust estate in which the bankrupt has a contingent interest, which is payable to the bankrupt in the event only that he should survive his mother, who is living. The said interest of the bankrupt is limited also by a spendthrift clause contained in the Last Will and Testament of the bankrupt's father, which provides that the interest of the

bankrupt in his father's estate is not subject to the claims of creditors, nor shall the bankrupt have the right to anticipate, assign or encumber his interest in the income or principal of said estate; that the bankrupt's mother, who is now living, is seventy (70) years of age and she is to receive the income for life from said trust and upon her death the corpus thereof is to be distributed in equal shares to three (3) children of said testator of whom the bankrupt is one.

3a. That it appears that the entire corpus of said trust is of the present value of approximately Nine Hundred Thousand ($900,000.00) Dollars. That therefore, the bankrupt, in the event he pre-deceased his mother, would be entitled to one-third (1/3) of such trust. That here- [109] tofore and on or about the 15th day of February, 1930, and more than ten (10) years prior to the filing of these bankruptcy proceedings, the bankrupt caused an assignment to be made to the Chicago Title & Trust Company of Chicago, Illinois, as trustee for Pauline D. Rudolph, of his interest in said trust, as security for an indebtedness owing to such creditor in the sum of Eight Hundred Two Thousand Four Hundred Eleven and 77/100ths ($802,411.77) Dollars. That said creditor, holding such assignment, has not filed a claim for his indebtedness in the above proceeding. That thereafter the bankrupt made a subsequent and junior assignment of his interest in said trust to the Continental Illinois National Bank and Trust Company of Chicago, Illinois, as security for their claim in the sum of Thirty Two Thousand Fifty Five Hundred and 10/100ths ($32,055.10) Dollars. That said bank has filed a claim herein.

4. A first meeting of creditors of the bankrupt was held on November 19, 1940, as well as subsequent meetings, at which the bankrupt was examined at great length. The bankrupt has been examined on numerous occasions by the Trustee and his attorneys and by creditors, in an endeavor to uncover assets in this estate.

5. The total number of claims filed herein within the time allowed for the filing of claims amounts to $974,-848.64. The claim of the estate of John T. Cunningham in the amount of $245,811.25 has been previously disallowed, and the total amount of the claims which will participate in any plan of arrangement is $729,037.39.

6. The Court finds that it is not true that said plan of arrangement is not for the best interests of the creditors of the bankrupt.

7. The Court finds that it is not true that said plan of arrangement is not fair, nor is it true that it is not equitable, nor is it true that it is not feasible.

8. The Court finds that it is not true that the debtor, Harold C. Strotz, the bankrupt herein, has been guilty of any act which would be a bar to the discharge of the bankrupt.

9. The Court finds that it is true that the bankrupt failed to [110] keep books of account and records from which his financial condition and business transactions might be ascertained, but that it is not true that the bankrupt mutilated, falsified or concealed any of his books of account or records, and in this connection this Court finds that the said failure of the bankrupt to keep books of account or records is excusable under all of the circumstances in this case and particularly in view of the fact

that the bankrupt for many years prior to the filing of his petition in bankruptcy was not engaged in any particular line of business and that the transactions carried on by him were not such as would require the keeping of a set of books or records.

10. That it is true that the bankrupt acknowledged that he had destroyed certain of his cancelled checks, but it is not true true that the bankrupt had no records of any kind which would indicate the amounts of money and property owned and received by him and the manner in which the same have been disposed of, and in this connection this Court finds that the destruction of certain of the cancelled checks of the bankrupt was excusable under all of the circumstances in this case, and particularly in view of the fact that the cancelled checks so destroyed were destroyed in the usual course of events and without any intent to hinder, delay or defraud creditors.

11. The Court finds that it is not true that the bankrupt did, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy herein, transfer, or remove, or destroy, or conceal, or permit to be removed, or destroyed, or concealed, his property with the intent to hinder, or to delay, or to defraud his creditors.

12. The Court finds that it is true that the bankrupt opened a bank account on or about December 13, 1938 in the name of F. J. Ward, which said bank account was maintained as a current and running account by the bankrupt until August 30, 1940, but it is not true that the bankrupt had moneys on deposit in said bank account averaging in excess of Two Thousand and 00/100 Dollars ($2000.00) from the 22nd day of October, [111]

1939, being a time one year prior to the commencement of these proceedings, to the date of the closing of said bank account, but in this connection the Court finds that the average amount on deposit in said bank account during the last mentioned period of time was approximately Four Hundred and 00/100 Dollars ($400.00); and the Court finds that it is not true that the bankrupt did, for the purpose of hindering, or delaying, or defrauding his creditors, or putting his property beyond the reach of creditors, cause said bank account to be opened or maintained in the name of F. J. Ward.

13. The Court finds that it is not true that the bankrupt caused to be transferred moneys belonging to him to a bank account in the name of F. J. Ward with intent to hinder, or delay or defraud his creditors within twelve months preceding the filing of the petition in bankruptcy herein.

14. The Court finds that it is true that the bankrupt caused to be transferred to F. J. Ward one-half (1/2) of a seven and one-third (7-1/3%) per cent, or some percentage, overriding royalty interest in the lease known as the "Long Beach Harbor Lease of the Interstate Investment Corporation," which lease was acquired by the Interstate Investment Corporation under an agreement with the General Petroleum Corporation of California and is part of a lease dated December 29, 1936, held by the General Petroleum Corporation of California in certain property located in the Rancho Los Cerritos in the Wilmington Oil Field, Long Beach, California, which transfer was made within one (1) year preceding the filing of the bankrupt's petition herein, but the Court finds that said transfer to F. J. Ward was for good and

valuable consideration and pursuant to agreement between the bankrupt and the said F. J. Ward that the bankrupt would have no interest in the said seven and one-third (7-1/3%) per cent override royalty unless he assisted in raising the necessary financing for the development of said oil lease, and in this connection the Court finds that the bankrupt failed to raise his share of said necessary financing. [112]

15. The Court finds that it is not true that the bankrupt caused one-half (1/2) of a seven and one-third (7-1/3%) per cent or other percentage of an overriding royalty to be concealed in the name of F. J. Ward with intent to hinder, or delay or defraud his creditors.

16. The Court finds that it is not true that the bankrupt caused to be transferred to F. J. Ward a royalty interest in "Abel Well No. 2" with intent to hinder, or delay or defraud his creditors, but in this connection the Court finds that said transfer was for good and valuable consideration.

17. The Court finds that it is not true that the bankrupt caused to be concealed in the name of F. J. Ward, or otherwise, an overriding royalty referred to above with intent to hinder, or delay, or defraud his creditors, and the Court finds that there was no concealment in this regard.

18. The Court finds that it is true that the bankrupt caused to be transferred to one Spencer H. Logan, two thousand (2000) shares of stock of the Beach Petroleum Company and a Promissory Note in the sum of Three Hundred Twenty and 00/100 Dollars ($320.00), but that

it is not true that said transfer or any part thereof was so made by the bankrupt with intent to hinder, or delay, or defraud his creditors, but that said transfer was made for good and valuable consideration.

19. The Court finds that it is not true that the bankrupt caused to be concealed in the name of Spencer H. Logan or otherwise, two thousand (2000) shares of stock of the Beach Petroleum Company, or caused to be concealed a Promissory Note of the Beach Petroleum Company for the sum of Three Hundred Twenty and 00/100 ($320.00) Dollars, or any stock or note with intent to hinder, or delay, or defraud the creditors of the bankrupt, and the Court finds that there was no concealment in this regard.

20. The Court finds that the bankrupt did withdraw the sum of Eleven Thousand Five Hundred and 00/100 Dollars ($11,500.00) from the estate of Anne Gould Strotz, deceased, as executor of said estate, and [113] that he paid said sum to himself as the beneficiary of said estate, which sum he expended for his living expenses and for the payment of certain of his obligations, but the Court finds that it is not true that he withdrew said money for the purpose of hindering, or delaying, or defrauding his creditors, or that he caused said money to be concealed for the purpose of putting the same beyond the reach of creditors, and in this connection the Court finds that at the time of the withdrawal of said sum of money there was no creditor of the bankrupt then in a position to reach said money by a levy of attachment or execution upon any judgment.

21. The Court finds that it is not true that the bankrupt, within one (1) year preceding the filing of the bank-

ruptcy petition herein, failed to file any inventory and appraisement in the estate of Anne Gould Strotz, deceased, pending in the Superior Court of Los Angeles County for the purpose of concealing from his creditors the fact that there were assets in said estate, or the fact that his interest in said estate was of some value, with intent to hinder, or delay, or defraud his creditors, and that it is not true that the bankrupt failed to file an inventory in said estate until after he had appropriated and disposed of to his own use and benefit moneys and property to which he was entitled as the heir of said estate; in this connection the Court finds that the said inventory and appraisement was filed by the bankrupt in the said probate estate on the 12th day of March, 1940, showing a gross estate belonging to the decedent, Anne Gould Strotz, in the sum of Forty Eight Thousand Seven Hundred Thirteen and 20/100ths Dollars ($48,713.20); and in this connection the court finds that said probate estate and all of the proceedings held therein were at all times open to the general public and to the creditors of this bankrupt who, upon inquiry, could have determined the amount and nature and assets of said estate and the interest therein of the bankrupt: and in this connection the Court further finds that the assets of said estate were marshalled by the bankrupt, as executor thereof, from time to time and until the [114] 12th of March, 1940, during which time the bankrupt, as said executor, received various sums of money from various sources, but that the bulk of said estate consisting of cash received by way of settlement of threatened litigation was so received within a short and reasonable time prior to the filing of the said inventory and appraisement.

22. The Court finds that it is not true that the bankrupt, with intent to hinder, or delay, or defraud his creditors, caused to be concealed certain or any assets in the name of Jay Gould, and in this connection the Court finds that the bankrupt did not transfer to Jay Gould any assets within one (1) year of the filing of the petition of bankruptcy or otherwise.

23. The Court finds that it is not true that the bankrupt failed to explain satisfactorily his loss of assets and the deficiency of assets to meet his liabilities, and that it is not true that the bankrupt failed to give full particulars in that regard, but in this connection the Court finds that the liabilities of the bankrupt have been satisfactorily explained as financial reverses incurred in the stock market crash of 1929, and in this connection the Court further finds that all of the liabilities of the bankrupt totalling $1,881,830.86 were incurred by the bankrupt at a time prior to the stock market crash of 1929 save and except the obligation of the bankrupt to the Reconstruction Finance Corporation which obligation was incurred on August 12, 1930; and the Court further finds that since August 12, 1930 to the date of the filing of the petition in bankruptcy herein, October 22, 1940, the bankrupt had and received no assets or money of any consequence excepting the sum of Eleven Thousand Five Hundred and 00/100 Dollars ($11,500.00) as heir of the estate of his deceased wife, Anne Gould Strotz, which sum was expended by him for his living expenses and to meet certain of his obligations, as aforesaid.

24. The Court finds that every creditor who has a provable and allowable claim herein, has recommended the approval of the plan of arrangement submitted by the

bankrupt pursuant to which the creditors of [115] the bankrupt would receive the sum of Thirty Two Thousand and 00/100 Dollars ($32,000.00), which the bankrupt has borrowed from his stepson, Jay Gould, and which is available conditional upon the approval of said plan of arrangement, save and except that the creditor, the Reconstruction Finance Corporation is the only creditor objecting to the approval of said plan. In this connection the Court finds that the Reconstruction Finance Corporation may possibly recover a substantial portion, if not all, of its claim herein, as against and from one of the cosigners of the Promissory Note upon which the obligation of the bankrupt to the said objecting creditor is based; to wit, against the estate of John T. Cunningham, deceased; that it is estimated that the assets of said estate of John T. Cunningham, deceased, as nearly as can be ascertained at the time are approximately Three Hundred Thousand and 00/100 Dollars ($300,000.00), and that said assets may amount to more or less from time to time; that other claims have been filed and allowed against the estate; that objecting creditor's claim, with interest, at the present time amounts to approximately Three Hundred Sixty Five Thousand and 00/100 Dollars ($365,000.00); that even though it prevails against said estate and collects therefrom, it will have a deficiency on its claim of approximately Sixty Five Thousand and 00/100 Dollars ($65,000.00) or more; that the right of objector to the claim against said estate is being contested in the Circuit Court of Cook County, Illinois, on appeal from the probate court thereof; that the estate and the beneficiaries thereof are taking the position "that the judgment obtained on the note extinguished the liability on said note,

and that said note was merged in the judgment, and that the judgment, being against more than one, is a joint judgment under the law; that the common law prevails and that under the common law, upon the death of a joint judgment debtor or any other joint obligor, the estate is not liable on the obligation, the liability then being that of the surviving joint obligor, and that if the estate prevails in such contention, objector may not make any recovery in said estate." [116]

25. The Court finds that there has been no sufficient evidence introduced in this proceeding to warrant the denial of the discharge of the bankrupt.

26. The creditor, Reconstruction Finance Corporation objects to the approval of the plan of arrangement on the ground that a majority of the creditors have not approved the same and as the basis of said contention maintains that the claim of one of the creditors herein voting in favor of the plan; to wit, Eugenia Vollentine, is barred by the Statute of Limitations, and if disallowed on that ground that there would then not be a majority of creditors in number and amount in favor of the plan. In this connection the Court finds that the claim of the said creditor, Eugenia Vollentine is based upon a Promissory Note which was executed and delivered to her by the bankrupt in Chicago, Illinois, and that in the State of Illinois the Statute of Limitations upon a Promissory Note is ten (10) years, and that the said Promissory Note is not now barred by the Statute of Limitations of the State of Illinois, and that an action on said Promissory Note could now be maintained against the bankrupt in the State of Illinois were it not for this proceeding in bankruptcy.

26a. The Court finds that under said trust of the father of the bankrupt, the bankrupt was designated as an investment counselor or adviser to the trustee under said trust. That by reason of such position under said trust, the bankrupt has been required from time to time in the past to make trips to Chicago to consult with the trustee under said trust, and the bankrupt will be required in the future to continue to make such trips from time to time to Chicago as part of his duties under said trust.

27. The Court finds that the claim of the Continental Illinois National Bank and Trust Company of Chicago is that of an unsecured general creditor.

Based upon the foregoing Findings of Fact, the Court makes its Conclusions of Law: [117]

1. The Court concludes that the evidence introduced in support of the objections to the discharge of the bankrupt is insufficient to warrant denial of the bankrupt's discharge, and such objections are therefore not grounds for the refusal by this Court of approval of a plan which appears to be for the best interests of the creditors herein.

2. The Court concludes that a majority of the creditors in number and amount have duly approved the proposed plan, and the plan appearing to be fair and equitable and for the best interests of the creditors, the same should be approved by the Court.

Based upon said Findings of Fact and Conclusions of Law,

It is ordered that the amended plan of the bankrupt herein be and the same is hereby approved; that the sum

of Thirty Two Thousand and 00/100 Dollars ($32,000.00) offered in the plan be declared assets of the above estate, subject to distribution to creditors whose claims have been filed and allowed herein, after deducting therefrom such sums as the Court may fix and allow and order paid as fees, costs and expenses of administration; that Harold C. Strotz, as debtor, be released and discharged from the claims of indebtedness scheduled by him herein; that the funds heretofore received by the Trustee in connection with the litigation against F. J. Ward be surrendered to F. J. Ward; that any and all other moneys or assets remaining at this time in the possession of the Trustee other than said sum of Thirty Two Thousand and 00/100 ($32,000.00) Dollars, be released to the bankrupt and debtor herein; that the Trustee be and he hereby is directed to dismiss the action heretofore commenced against Spencer H. Logan, as well as any other proceedings that may be pending, heretofore instituted by the Trustee.

Dated this 2nd day of December, 1942.

ERNEST R. UTLEY
Referee in Bankruptcy.

[Endorsed]: Filed Dec. 2, 1942 at min. past 10 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [118]

[Title of District Court and Cause.]

ORDER FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW

Petition having been made by Reconstruction Finance Corporation for an extension of time to file petition for review of the Order overruling the objections of Reconstruction Finance Corporation to the Findings of Fact and Conclusions of Law and Order confirming plan of arrangement and making and entry of Findings of Fact and Conclusions of Law and Order confirming plan of arrangement and overruling the objections of Reconstruction Finance Corporation to the claim of Eugenia Vollentine and to the plan of arrangement offered by said bankrupt, which Order or Orders was or were made on December 2, 1942, and good cause being shown therefor;

It is hereby ordered that said petition be and is hereby granted and the time of Reconstruction Finance Corporation to file its petition to review the said Order or Orders be and is hereby extended to and including December 31, 1942.

Dated and signed at Los Angeles, California, this 8th day of December, 1942.

ERNEST R. UTLEY
Ernest R. Utley
Referee in Bankruptcy

[Endorsed]: Filed Dec. 8, 1942 at 30 min. past 3 o'clock p. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk. C.

[Endorsed]: Filed Dec. 30, 1942. [119]

[Title of District Court and Cause.]

PETITION OF RECONSTRUCTION FINANCE CORPORATION TO REVIEW ORDER ENTERED DECEMBER 2, 1942.

To the Honorable Ernest R. Utley, Referee in Bankruptcy:

Now comes Reconstruction Finance Corporation, a corporation created by act of Congress of the United States of America, and respectfully alleges:

I.

That said Harold C. Strotz was duly adjudged a bankrupt October 23, 1940, on a petition filed by him in the above cause on the 22nd day of October, 1940.

II.

That your petitioner is a creditor of Harold C. Strotz, the bankrupt; that on March 13, 1941, it filed its claim herein for the sum of $245,811.25.

III.

That within the time prescribed by this Court for filing objections to discharge in this cause, to wit, on March 19, 1941, petitioner filed its objections to the granting to said bankrupt a discharge from his debts and specified as grounds of objection the following:

[Here followed the quotation of "Specification of Objections to Discharge" which will be found at page 63 of the Transcript of Record so is not repeated at this time.]

IV.

That after the filing of said objections to discharge, to wit, on April 30, 1941, said Harold C. Strotz, bankrupt

herein, filed his petition under Chapter XI of the Bankruptcy Act, Section 321 thereof, in the [120] above mentioned bankruptcy proceeding to effect an arrangement with his creditors as follows:

"A. Secured Creditors:

"1. Your petitioner is indebted to the estate of Pauline D. Rudolph and to Franklin N. Dohn, Charles Dohn, Pauline Dohn, Rudolph Sherman, Herbert N. Butz, John A. Faher, Trustee for Franklin Dohn Rudolph, in the sum of $827,411.77, which claim is secured by a collateral Trust agreement in the favor of Chicago Title and Trust Company of Chicago, Illinois, as trustee for Pauline D. Rudolph, by the terms of which petitioner proposed to transfer, as collateral security for said indebtedness, all of his right, title and interest as beneficiary under the Last Will and Testament of Charles Nicolas Strotz, deceased. This creditor has not filed a claim in this bankruptcy proceeding to the date hereof.

"2. Your petitioner is also indebted to Continental Illinois Bank and Trust Company of Chicago, Illinois, in the sum of $32,055.70. In connection with this indebtedness, your petitioner executed what purports to be an authorization directed to the First National Bank of Chicago, as Trustee of the residuary trust estate created under the Last Will and Testament of petitioner's father, Charles Nicolas Strotz, deceased, authorizing said trustee to pay the claim of the said creditor out of any of the assets which your petitioner might be entitled to receive from said residuary trust estate at the time fixed for the distribution of the corpus thereof.

"The above two are the only secured creditors of petitioner. In view of the fact that there are no assets in this bankruptcy estate, available for secured creditors, save the interest which petitioner may have in his father's trust estate as aforesaid, and in view of the fact that the secured creditor, estate of Pauline D. Rudolph, as aforesaid, has not filed any claim herein, this Arrangement will apply equally to secured and unsecured creditors filing claims.

"B. Unsecured Creditors: [121]

"All unsecured debts affected by this Arrangement shall be treated on a parity, save and except those creditors who may, in order to assist the petitioner in effecting this Arrangement, waive any claim to share therein.

"Your petitioner has no property or assets of any kind, but will arrange to obtain from his family, and will offer to his creditors, cash in the sum of $10,000.00. In addition to said sum of $10,000.00, your petitioner will execute any necessary writing, by the terms of which he will assign to his creditors who may have an interest in this bankruptcy proceeding and a right to share therein, ten per cent (10%) of the right, title or interest which petitioner may have as beneficiary under the Last Will and Testament of his father's estate, Charles Nicolas Strotz, deceased. Attention is here called to the fact that pursuant to Paragraph XII of said Last Will and Testament of petitioner's father, which is a 'Spendthrift Clause' provision, petitioner's interest in his father's estate is expressly declared to be not a vested interest and not subject to the right to an-

ticipate, assign or encumber the same, nor subject to claims of creditors of petitioner.

"It is the intention of the petitioner, in making this offer to his creditors, that any and all proceedings which may now be pending by the Trustee in Bankruptcy herein, to set aside any conveyances heretofore made by petitioner, on the ground of fraud, be dismissed. This intention is here expressed, on the ground that petitioner has not entered into any fraudulent conveyances, and that in making this Arrangement, he desires to settle and compromise all claims of creditors who may have filed their claims herein, as well as any claims of any person or persons who may suffer loss by reason of any proceeding to set aside a conveyance of property made to him of them by your petitioner."

V.

On July 2, 1941, the above named bankrupt filed a proposed [122] amended plan of arrangement wherein it was stated as follows:

"That petitioner has arranged to obtain a loan in the sum of $25,000.00 in cash, which sum he proposes to cause to be paid over to the above bankrupt estate, to be paid to those of his creditors whose claims on file herein will be allowed. That immediately upon the acceptance and approval of this petition said sum of $25,000.00 in cash will be delivered over to the above bankrupt estate.

"That in addition to the payment of said sum of $25,000.00, petitioner will execute and deliver to the Trustee in Bankruptcy herein all necessary documents,

by the terms of which he will assign to the creditors whose claims have been filed and allowed herein an interest to the extent of ten per cent (10%) of any right, title or interest which petitioner may have as beneficiary under the Last Will and Testament of his father's estate, Charles Nicholas Strotz, deceased. Attention is here called to the fact that pursuant to paragraph XII of said Last Will and Testament of petitioner's father, which is a 'spendthrift clause' provision, the interest of the petitioner in the estate of his father is expressly declared to be not a vested interest and not subject to the right to anticipate, assign or encumber the same, nor subject to claims of creditors of petitioner.

"It is the intention of the petitioner, in making this offer to his creditors, that any and all proceedings which may now be pending by the Trustee in Bankruptcy herein to set aside any conveyances heretofore made by petitioner, on the ground of fraud or otherwise, be dismissed. This intention is here expressed on the ground that petitioner has entered into no fraudulent conveyance, and that in making this Arrangement, he desires to settle and compromise all claims of creditors who may have filed their claims herein, as well as any claims of any person or persons who may suffer loss by reason of any proceeding to set aside any conveyance of property made to him or them by your petitioner. [123]

"It is also the intention of the petitioner that any assets of the bankrupt estate now in the possession of the Trustee in Bankruptcy as aforesaid be applied

upon and not be deemed to be in addition to the sum of $25,000.00 offered herein."

VI.

Thereafter, on May 27, 1942, the bankrupt filed an amendment to said proposed plan of arrangement wherein he increased the offer of $25,000.00 contained in said amendment of July 2, 1941, to $32,000.00.

VII.

Eleven claims were filed in said bankruptcy proceeding within the time allowed for the filing of claims. The total amount thereof was $974,848.64. One claim which was filed in the sum of $245,811.25 was disallowed, leaving claims in the sum of $729,037.39. Among the claims filed and allowed herein was a claim of W. E. Fleming, agent for Eugenia Vollentine, in the sum of $168,410.85. Said claim was based upon five promissory notes executed by the bankrupt January 14, 1932, due two, three and four years after date. Reconstruction Finance Corporation objected to said claim upon the ground that same was barred by the Statute of Limitations of the State of California and objected to said claimant voting upon said petition for arrangement under Chapter XI, Section 321, or from participating in the distribution of the assets of said bankrupt estate.

VII.

It was stipulated that all of said matters be heard together and that the objections to the discharge of said bankrupt stand as objections to the said amended petition for arrangement filed under Chapter XI, Section 321.

IX.

The hearing of said matters came on before the Honorable Ernest R. Utley, Referee in Bankruptcy, and upon such hearing it was stipulated that the examination of said bankrupt under Section 21a of the Bankruptcy Act and the evidence taken upon a petition filed by the Trustee in Bank- [124] ruptcy against F. J. Ward be considered as evidence upon said matters.

X.

That after said hearing the said Honorable Ernest R. Utley, Referee in Bankruptcy, on the 2nd day of December, 1942, made findings of fact, conclusions of law, and an order in words and figures as follows:

[Here followed the quotation of the "Findings of Fact, Conclusions of Law and Order" which will be found at page 115 of the Transcript of Record so is not repeated at this time.]

XI.

That said order entered December 2, 1942, was and is erroneous in the following respects:

(a) That portion of finding number 5 reading:

> "The total amount of the claims which will participate in any plan of arrangement is $729,037.39."

is erroneous. Included in said amount is the claim of Eugenia Vollentine in the sum of $168,410.85 which was at the time of the filing of the petition in bankruptcy herein barred by the Statute of Limitations of the State of California as is hereinafter more particularly set forth. The Referee should have found that:

> "The total amount of claims which will participate in any plan of arrangement is $560,626.54."

(b) The findings made in paragraph 3a of said order are erroneous and incomplete in the following respects. The evidence shows the corpus of the trust referred to to be approximately One Million Dollars and the annual income therefrom to be over Thirty Thousand Dollars (Vol. I, p. 17 transcript). The findings of the Referee with respect to the assignment by the bankrupt of his interest in said trust are misleading. It is stated in the plan of arrangement filed by said bankrupt:

> "that pursuant to Paragraph XII of said Last Will and Testament [125] of petitioner's father, which is a 'Spendthrift Clause' provision, petitioner's interest in his father's estate is expressly declared to be not a vested interest and not subject to the right to anticipate, assign or encumber the same, nor subject to claims of creditors of petitioner."

Under the laws of Illinois, where said trust exists, said provision is valid and said assignments are void. Said trust under its terms terminates upon the death of the mother of the bankrupt and upon the happening of said contingency the said spendthrift clause will no longer be in effect; and if the bankrupt survives his mother, his distributive share will then be subject to the claims of his creditors.

(c) Finding number 6 is against the uncontradicted facts in the record. The Referee should have found:

> "The Court finds that said plan of arrangement is not for the best interests of the creditors of the bankrupt."

It is stated in paragraph 3 of said findings that the bankrupt has a contingent interest in a trust estate created

by his father which terminates upon the death of his mother now 70 years of age, upon the happening of which event the bankrupt will receive one-third of the corpus of said estate. It appears from the evidence that said trust estate now exceeds the sum of One Million Dollars. The creditors would by said plan of arrangement be prevented from proceeding against said fund in the event that said bankrupt survives his mother.

(d) Finding 7 is erroneous for the reason that the record discloses that said plan is not fair and equitable and was not made in good faith; that the plan was not offered until after objections were filed to the discharge of said bankrupt and the amended plan was filed more than one year after the adjudication of said bankrupt and was for the purpose of avoiding the effect of the acts committeed by him which would operate as a bar to his discharge.

(e) Finding 8 is against the uncontradicted evidence and admissions of the bankrupt made in said proceeding as is hereinafter more [126] specifically set forth.

(f) Findings 9 and 10, wherein it is stated that the failure of the bankrupt to keep books of account or records and the fact that the bankrupt acknowledged he had destroyed his cancelled checks is excusable under all the circumstances of the case, are erroneous for the reason that it appears from the record that for a period of two years immediately preceding the filing of said petition in bankruptcy the bankrupt maintained a bank account in the name of F. J. Ward for the purpose of concealing the funds therein from his creditors and hindering and delaying his creditors. Said bank account consisted of a checking account at the Security-First National Bank at Los

Angeles, California, from December 13, 1938, to August 30, 1940. During said period he made 66 deposits aggregating $26,260.16 and drew 308 checks aggregating $26,260.16 (Exhibit 2). Each month he destroyed the cancelled checks and kept no books or records covering said transactions. Under such circumstances the Referee should have denied the discharge because of the failure of the bankrupt to keep books from which his financial condition may be ascertained.

(g) Finding 11 is against the uncontradicted evidence and admissions of the bankrupt made in said proceeding as is hereinafter more specifically set forth.

(h) Findings 12 and 13 are in conflict with the following uncontradicted evidence and admissions made by the bankrupt. The bankrupt testified:

> (Vol. I, p. 30) "I had a bank account in the Security-First National Bank of Los Angeles, Hollywood and Cahuenga Branch. The account was in the name of F. J. Ward and checks were signed by myself for Mr. Ward."
>
> (Vol. I, p. 39) "This account was closed in August or September of 1940."
>
> (Vol. I, p. 94) "The reason for that was that I was continually harassed by sheriff's orders or something like that, and I was just afraid to try and do anything." [127]
>
> (Vol. I, p. 98) "Yes, when did they start harassing you so you could not do business? A. I consider they have been doing it ever since 1930."
>
> (Vol. I, p. 107-108) "Q. You had an account in the name of F. J. Ward? A. That is right. Q.

At the Security-First National Bank in Hollywood? A. Hollywood and Cahuenga. Q. What did you use that account for, the account in the name of F. J. Ward? A. I used it as a banking account. Q. To pay your personal expenses and things of that kind? A. Yes. Q. To pay your department store accounts? A. Yes. Q. When did you open the account in the name of F. J. Ward? A. The bank has the record— Q. I want your recollection. A. I think I opened it in the fall of 1938. The Referee: What was the purpose of carrying the account in the name of F. J. Ward? A. Because I was having a lot of trouble at the time with my former wife and I had had my bank account attached prior to that, so I carried it in his name."

(Vol. II, p. 17) "On or about December, 1939, I had an average balance in my bank account in the name of F. J. Ward, in excess of $1,000.00." The account of the bankrupt in the name of F. J. Ward, commencing December 13, 1938, up to the date of the closing of the account on August 30, 1940, consisting of four ledger sheets and two signature cards was offered in evidence as trustee's Exhibit No. 2.

(Vol. II, p. 23) "On or about September 6, 1939, I was served with a summons and complaint in an action filed in the Superior Court of Los Angeles County, No. 444,462, entitled Martin T. O'Brien as receiver of the Reliance Bank and Trust Company, plaintiff, versus Harold C. Strotz, defendant."

On August 21, 1940, Judge Wilson of the Superior Court in the O'Brien suit issued an order upon the bank-

rupt to show cause why he should not be restrained from transferring, hypothecating, or creating any lien upon any and all moneys, credits, or other things of value owned [128] by or in possession or under the control of the Security-First National Bank of said Harold C. Strotz (Vol. II, p. 39-40), was returnable August 30, 1940, and was served on the bankrupt August 28, 1940. At the time of the service of the rule on the bankrupt on August 28, 1940, there was a balance in the "Ward" bank account of $676.57. On September 6, 1940, bankrupt filed his affidavit in opposition to the order to show cause, in which he stated that he did not have a bank account at the Security-First National Bank of Los Angeles at the time of the service of the order (Vol. II, p. 39-40).

F. J. Ward testified (Vol. I, p. 181) that Strotz told him "there was a possibility of certain moneys of his being attached and he asked me if I would object to having that account and I said no."

During the course of the hearing the Referee made the following statements:

> (Vol. II, p. 156) "The Referee: I will tell you frankly the testimony thus far that impresses me in this matter, and the only testimony that impresses me is the fact these men were very close friends, lived together in the one house. that Mr. Ward did permit Mr. Strotz to use his name to carry a bank account in, and that it was being done for the purpose of keeping funds away from Mr. Strotz's creditors, backed by the further fact that Mr. Ward knew Mr. Strotz was in financial difficulty and the fact they carried on these transactions, together with the close

relationship shown by the transactions in the oil venture—referring to the two covered by Respondent's Exhibits A and B, and shown by some of the contracts relating to the same transaction."

(Vol. II, p. 164) "The Referee: The testimony shown here that Mr. Strotz wanted to do something to prevent creditors from reaching his money, and Mr. Ward in 1938 was perfectly willing to go along with him and cooperate with him in that manner, and the Court can take that into consideration in determining whether or not he was willing to assist Mr. Strotz in protecting himself in some other [129] matters. While you can argue the matter, I am afraid you cannot make any impression on the Court on that point."

(Vol. II, p. 165) "The Referee: That may be the testimony but the view of the Court from the testimony I have heard is I am impressed with this, that Mr. Strotz was not worried about his wife attaching him one-half as much as he was about someone else attaching. Mr. Garbus: There wasn't another single solitary creditor mentioned at the time, or evidence that another creditor existed at that time. The Referee: The Court cannot accept that viewpoint."

(Vol. II, p. 169-172) "The Referee: Well, Mr. Strotz testified here, and he has been very frank about it, in substance that he put this money where it could not be attached. Mr. Garbus: Which money is that? The Referee: Put it in Mr. Ward's bank account. Mr. Garbus: There wasn't any money then—just a few hundred dollars. The Referee:

Any other construction of his testimony in that regard would certainly be a very, very strange construction."

"Mr. Garbus: Yes, but this reflects upon the bankrupt, and you know very well if it is to be brought in on the charge of fraud on the part of the bankrupt I will resist it to the last, and every attorney should. Your Honor, Mr. Strotz testified he opened this bank account solely for the purpose of giving him the opportunity not to be harassed by attachments. That is true. He made the general statement but he had in his mind his ex-wife, but that is not a wrong as far as his creditors— The Referee: Let us see whether or not it is. If he did put this money in the bank so he could have paid creditors and had used it for that purpose then there might be something to your argument, but where he carries the bank account and uses it for every other conceivable purpose other than that I think a different inference has to be drawn from it. Mr. Garbus: Your Honor, would your Honor say then that the law is a man who is in debt must wear his heart on his sleeve, as far as his creditors are concerned? That is not the law. The law is a man in [130] debt has a right to prefer one creditor over another, he has the right to invest his money in a speculation, he has a right to buy things he needs, an automobile and clothing— The Referee: If there has been any kind of preferring one creditor over another I have not seen it because I have not seen any evidence where any creditor got money, so there is no preferring one creditor over another. They have

been all very much in the same class, they have not gotten anything, as far as the testimony is concerned."

The Referee should have found:

"That the bankrupt from October 22, 1939, until August 30, 1940, being within a period of twelve months immediately preceding the filing of the petition in bankruptcy, maintained a bank account in the name of F. J. Ward for the purpose of concealing from his creditors money deposited and maintained therein with intent of hindering, delaying, and defrauding his creditors, and putting his property beyond the reach of his creditors, in which said bank account during said period the bankrupt made 34 deposits aggregating $16,910.77 and issued 183 checks aggregating $17,341.30."

(i) Findings 20 and 21 are contradicted by the following uncontradicted evidence and admissions made by the bankrupt. Anne Gould Strotz, the wife of the bankrupt, died September 13, 1938 (Vol. I, p. 36). The bankrupt was appointed executor for her estate by the Superior Court of Los Angeles, California, October 25, 1938, and no inventory was filed until March 12, 1940 (Vol. I, p. 309). From the time of his appointment as executor until March 1940, the bankrupt received, as executor of the estate, approximately $18,000 (Vol. I, p. 36). The bankrupt testified as follows:

(Vol. I, p. 140) "I received the first of this money in 1939, and the last of it in February, 1940. With this money, I went to Honolulu and to New York and to Chicago, and I tried to make arrangements to settle my other accounts."

(Vol. I, p. 141) "Most of this money I kept in cash. I may have [131] deposited one or two thousand dollars in the account I had in the name of F. J. Ward. When I say I kept it in cash I mean cashier's checks drawn on the Security-First National Bank. I received the money at different times. I used some of it for living expenses and some for trips."

(Vol. I, p. 304-305) "Mr. Dechter: Q. Mr. Strotz, I will show you a letter written by your counsel, Simon and Garbus, to William J. Currer dated October 23, 1939 in re Martin T. O'Brien, and so forth, versus Harold C. Strotz.

" 'Dear Mr. Currer: This is to confirm our understanding that the defendant in the above-entitled action need not answer the complaint on file herein or otherwise plead in said action until you give to this office notice requesting him so to do. We understand that in the meantime you will advise this office as to the attitude of your client in extending the prosecution of this action to preparations for settlement of this matter.

Yours very truly, Simon and Garbus by Morton Garbus.'

Does that refresh your memory you withdrew this $11,500 after this action was pending against you? Mr. Garbus: What is the date of that letter? A. October 23, 1939. Mr. Garbus: That is nearly six months, isn't it? Mr. Dechter: Will you read the question? (The reporter read the pending question.) A. Well, of course I withdrew it afterwards, if that is the date of the letter."

(Vol. I, p. 308-309) "Mr. Dechter: Q. Mr. Strotz, I will show you the ledger sheet of the Security-First National Bank, Hollywood and Cahuenga Branch, which shows that you made the following deposits to the account of the estate of *Ann* G. Strotz: October 29, 1938, $1,562; November 28, 1938, $447.77; April 21, 1939, $3,000.00; June 13, 1939, $15,000.00.

The witness calls my attention to the fact I missed a dollar deposit on May 5, 1939. June 29, 1939, $5,000.00; November 9, 1939, $5.87; December 14, 1939, $300.00; February 26, 1940, $16,948.12; or a [132] total of approximately a sum in excess of $40,000.00 between those dates."

(Vol. II, p. 45-46) "I issued a check on the Hollywood and Cahuenga Branch of the Security-First National Bank of Los Angeles to the estate of Anne Gould Strotz by Harold C. Strotz, executor, for $11,500.00, payable to the order of myself. I took this check and received in return for the same cashier's checks aggregating the sum of $11,500.00."

(Vol. II, p. 49) "I took this money out to pay certain bills, and I drew it out because I will admit I was afraid my bank account might be attached in some form or other."

(Vol. II, p. 50) "At the time I drew this money from the estate account, I kept it in cashier's checks. I had this checking account in the name of F. J. Ward."

(Vol. II, p. 51) "I have been insolvent since December, 1929."

(Vol. II, p. 95) Witness shown check dated October 20, 1939, drawn on the estate of Anne G. Strotz account for $1,000.00 and testified (p. 96) that it was drawn without a court order. The check was made payable to Harold Strotz.

(Vol. II, p. 97) "I don't know what I did with that particular money."

(Vol. II, p. 98) Bankrupt shown check of estate dated July 1, 1939, payable to bankrupt in the sum of $4,000.00."

(Vol. II, p. 99) "I did not have a court order from the probate court of Los Angeles County authorizing that withdrawal. I believe I took $2,000.00 of this money with me to Honolulu. I have no record of what I did with it. This withdrawal of $4,000.00 on July 1, 1939, was made after I deposited $5,000.00 in the account of the estate of Anne Gould."

(Vol. II, p. 102) "I was the residuary beneficiary of the estate and withdrew funds from the estate account from time to time and used those funds for my personal benefit." [133]

(Vol. II, p. 103) "The estate of Anne Gould was opened in October, 1938, and no inventory was filed until March 12, 1940."

(Vol. II, p. 113-114-115-116) Bankrupt shown check (trustee's Exhibit No. 6) for $11,500.00 drawn on the estate account of Anne G. Strotz payable to bankrupt and bankrupt testified that in exchange for this check he received the following cashier's checks.

dated February 26, 1940: Check No. 777,205 for $3,600.00 payable to Harold C. Strotz. Check No. 777,207 for $1,500.00 payable to Harold C. Strotz. Check No. 777,204 payable to Sidney M. Strotz, brother of bankrupt for $3,000.00. Check No. 777,201 payable to Bekins Van & Storage Company for $800.00. Check No. 777,202 payable to Guy M. Peters for $500.00. Check No. 777,203 payable to Hamilton Vose, Junior, for $500.00. These checks total $9,700.00. "I don't remember whether I received the balance of the $11,500.00 in cash. The check No. 777,205 for $3,600.00 was cashed by me March 1, 1940."

(Vol. II, p. 116) "With reference to the check made out to my brother, Sidney M. Strotz for $3,000.00, within a week after the check was issued, I received in return for that check the personal check of my brother for $3,000.00 drawn on the First National Bank of Chicago."

(Vol. II, p. 177) "When the personal check for $3,000.00 was received back from my brother, I deposited it in the bank account I had in the name of F. J. Ward. When I received this personal check of my brother's for $3,000.00 he said he would not accept it as I needed it more than he did. I sailed for Honolulu July 27, 1939, and returned September 13, 1939."

The Referee should have found:

"20. That said bankrupt, for the purpose of hindering, delaying and defrauding his creditors, caused to be concealed the sum of $11,500.00, which he with-

drew from the bank account of the Estate of Anne Gould Strotz, his deceased wife, for the purpose of putting the same beyond the reach of creditors; and that such con- [134] cealment took place and continued to within one year preceding the filing of the petition in bankruptcy herein.

"21. That said bankrupt, within one year preceding the filing of the bankruptcy petition herein, failed to file any inventory and appraisement in the estate of Anne Gould Strotz, deceased, pending in the Superior Court of Los Angeles County, for the purpose of concealing from his creditors the fact that there were assets in said estate, and the fact that his interest in said estate was of some value, all with intent to hinder, delay and defraud his creditors; and failed to file an inventory in said estate until after he had appropriated and disposed of, to his own use and benefit, moneys and property to which he was entitled as the heir of said estate."

(j) That portion of finding 23 which reads:

"and the Court further finds that since August 12, 1930 to the date of the filing of the petition in bankruptcy herein, October 22, 1940, the bankrupt had and received no assets or money of any consequence excepting the sum of Eleven thousand five hundred and 00/100 Dollars ($11,500.00) as heir of the estate of his deceased wife, Anne Gould Strotz, which sum was expended by him for his living expenses and to meet certain of his obligations, as aforesaid."

is erroneous. Said finding is contradicted by the admissions of the bankrupt and uncontradicted evidence hereinbefore set forth.

(k) Finding 25 is erroneous for the reason that by the admissions of the bankrupt and uncontradicted evidence the objections of the Reconstruction Finance Corporation are amply sustained. The Referee in making said finding has disregarded the provisions of section 14(c) of the Bankruptcy Act placing upon the bankrupt the burden of proof that he has not committed any of such acts after the objector has shown that there are reasonable grounds for believing that the bankrupt has committed same.

(l) Finding 26 is erroneous and incomplete. The Referee [135] should have found:

> "Said claim of Eugenia Vollentine is based upon five notes dated January 14, 1932, due two, three, and four years after date. In the State of California the Statute of Limitations upon a note is four years. The bankrupt for a period of more than four years immediately preceding the filing of his petition in bankruptcy was a resident of the State of California. It is the settled law of the State of California that an action brought on a note in the State of California against a resident of the State of California, executed in a foreign state, is controlled by the California four-year Statute of Limitations. Sullivan vs. Shannon, 25 Cal. App. 2d 422, 77 Pac. 2d 422, and cases therein cited."

(m) Finding 26a is unsupported by the record.

XII.

Petitioner having shown that there were reasonable grounds for believing that the bankrupt committed the

said acts which would bar his discharge and the bankrupt having failed to furnish a satisfactory explanation, it was mandatory upon the Referee to enter an order denying the bankrupt's discharge.

XIII.

The Referee erred in overruling the objections of petitioner to the bankrupt's discharge and granting to the bankrupt a discharge.

XIV.

The Referree erred in allowing the said claim of Eugenia Vollentine.

XV.

The Referee erred in approving the amended plan of the bankrupt.

Wherefore, your petitioner, feeling aggrieved because of such order, prays that the same be reviewed as provided in Section 39 C of the Bankruptcy Act.

RECONSTRUCTION FINANCE CORPORATION
By FRANK MICHELS
Its Attorney and Authorized Agent in This Behalf. [136]

[Verified.]

[Endorsed]: Filed Dec. 12, 1942 at 20 min. past 10 o'clock a. m. Ernest R. Utley, Referee; Louise Rodgers, Clerk.

[Endorsed]: Filed Dec. 30, 1942. [137]

[Title of District Court and Cause.]

OBJECTIONS OF RECONSTRUCTION FINANCE CORPORATION TO CERTIFICATE FILED BY REFEREE ERNEST R. UTLEY UPON ITS PETITION TO REVIEW THE ORDERS ENTERED BY SAID REFEREE DECEMBER 2, 1942 AND PROPOSED SUMMARY OF EVIDENCE.

Now comes Reconstruction Finance Corporation, a corporation created by act of Congress of the United States of America, by J. J. Lieberman and Frank Michels, its attorneys, and objects to the certificate filed herein by Referee Ernest R. Utley upon its petition to review the orders entered by said Referee on December 2, 1942, for the reason that said Referee's certificate does not contain a complete or adequate statement of the questions presented or a summary of the evidence as required by sec. 39a (8) of the Bankruptcy Act.

Questions Presented

The questions presented are:

1. Whether the bankrupt committed the following acts included in the specification of the objections of the Reconstruction Finance Corporation to the bankrupt's discharge: (a) failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained; (b) at any time subsequent to the first day of twelve months immediately preceding the filing of the petition in bankruptcy concealed or permitted to be concealed any of his property with intent to hinder, delay, or defraud his creditors.

2. Whether the Referee can arbitrarily disregard the admission of the bankrupt that he was guilty of said acts. [153]

3. Whether a plan submitted by the bankrupt under sec. 321 of Chapter XI of the Bankruptcy Act, after the filing of objections to the discharge, for the purpose of bargaining with his creditors and the court for his discharge is made in good faith.

4. Whether the claim of Eugenia Vollentine should be allowed or whether it is barred by the Statute of Limitations of the State of California.

5. Whether the claim of Eugenia Vollentine, if it was barred by the Statute of Limitations, should be permitted to vote upon the plan and participate in the distribution of the assets of the estate.

Proposed Summary of Evidence Submitted By Reconstruction Finance Corporation

Summary of Evidence

Harold C. Strotz, the bankrupt, was a resident of the Southern District of California for more than four years prior to the filing of his voluntary petition in bankruptcy herein on October 22, 1940. During said period the bankrupt was interested in the operation of various oil companies and negotiated several oil royalty contracts. The total number of claims filed in this proceeding amounted to $974,848.64. One claim, that of the estate of John T. Cunningham in the sum of $245,811.25, was disallowed, leaving claims amounting to $729,037.39.

Included in the remaining claims filed aggregating $729,037.39 is the claim of Eugenia Vollentine which was

based upon five notes executed in the State of Illinois, dated January 14, 1932, due two, three, and four years after date. In the State of California the Statute of Limitations upon a note is four years. Under the law of the State of California, as held in the case of Sullivan v. Shannon, 25 Cal. App. 2d 422, 77 Pac. 2d 422, and cases therein cited, an action brought on a note in [154] said State against a resident of said State, executed in a foreign State, is subject to the four-year Statute of Limitations of said State. The Reconstruction Finance Corporation objected to said claim upon the ground that same was barred by the Statute of Limitations of the State of California. The claim of the Reconstruction Finance Corporation was filed herein for the sum of $340,566.45 and is based upon a judgment rendered December 30, 1940, by the Appellate Court of Illinois against the bankrupt, John T. Cunningham and others and was based upon a joint and several note signed by the defendants dated August 12, 1930. This judgment was later affirmed by the Supreme Court of Illinois, the court of last resort in said State. If the claim of Eugenia Vollentine is allowed, the claim of the Reconstruction Finance Corporation should represent over 45 per cent of the total of claims. If the objections to the claim of Eugenia Vollentine are sustained the claim of the Reconstruction Finance Corporation would be more than 50 per cent of the aggregate of all other claims filed.

On March 19, 1941, the Reconstruction Finance Corporation filed objections to the discharge of the bankrupt upon various grounds, in which it was specified that the bankrupt committed, among others, the following acts which would bar his discharge:

1. He failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained.

2. That he, subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy, transferred, removed, or concealed, or permitted to be removed or concealed his property with intent to hinder, delay, or defraud his creditors.

On April 31, 1941, the bankrupt filed a plan of [155] arrangement under the provisions of Section 321 of Chapter XI of the Bankruptcy Act. On July 2, 1941, the bankrupt filed an amended plan of arrangement to which the creditors objected and later, on May 27, 1942, bankrupt filed an amendment to his petition for arrangement as amended, under the terms of which he offered to his creditors the sum of $32,000. The Reconstruction Finance Corporation objected to this plan of arrangement.

The evidence shows that the bankrupt is the son of Charles Nicolas Strotz who was at the time of his death a resident of Chicago, Illinois, and whose will was probated in the Probate Court of Cook County, Illinois, under which will a trust was created of which the First National Bank of Chicago and the bankrupt are the trustees. The corpus of the said trust is approximately one million dollars and the annual income therefrom is over $30,000 (Vol. I, p. 17 transcript). Said trust under its terms terminates upon the death of the mother of the bankrupt, and upon the happening of said contingency the bankrupt, if he survives his mother, under the terms of said will receives one-third of the corpus of said trust. An assignment of the said future interest of the

bankrupt in said trust was made many years prior to the filing of the petition in bankruptcy, to a creditor whose claim has not been filed in this proceeding. Said trust agreement contains a spendthrift clause which prohibits the assignment of the interest of any of the beneficiaries under said trust during the term of its existence, and under the laws of the State of Illinois said provision is valid and said assignment is void.

The bankrupt admitted in his testimony that from December 13, 1938, to August 30, 1940, he maintained a bank account in the name of F. J. Ward at the Security-First National Bank at Los Angeles, California. During said period he made 66 deposits aggregating $26,260.16 and drew 308 checks aggregating $26,260.16 [156] (Exhibit 2). Each month he destroyed the canceled checks and kept no books or records covering said transactions. The bankrupt with respect to this bank account testified:

> (Vol. I, p. 30) "I had a bank account in the Security-First National Bank of Los Angeles, Hollywood and Cahuenga Branch. The account was in the name of F. J. Ward and checks were signed by myself for Mr. Ward."
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> (Vol. I, p. 39) "This account was closed in August or September of 1940."
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> (Vol. I, p. 98) "Yes, when did they start harassing you so you could not do business? A. I consider they have been doing it ever since 1930."

The evidence (Exhibit 2) disclosed that within a period of twelve months immediately preceding the filing of the petition in bankruptcy the bankrupt made 34 deposits in this bank account aggregating $16,910.77 and issued 183 checks against said account aggregating $17,341.30.

On September 6, 1939, the bankrupt was served with a summons and complaint in an action filed in the Superior Court of Los Angeles County entitled Martin T. O'Brien, as Receiver of the Reliance Bank and Trust Company, v. Harold C. Strotz (Vol. II, p. 23). On October 23, 1939, an agreement was made between the bankrupt and this creditor that until further notice the bankrupt would not be required to answer this complaint so as to afford to the bankrupt an opportunity to make a settlement (Vol. I, p. 304-305). On August 21, 1940, Judge Wilson of the Superior Court in said case issued an order upon the bankrupt to show cause why he should not be restrained from transferring, hypothecating, or creating any lien upon any and all moneys, [157] credits, or other things of value owned by or in possession or under the control of the Security-First National Bank of said Harold C. Strotz (Vol. II, p. 39-40). This order was returnable August 30, 1940, and was served on the bankrupt August 28, 1940. At the time of the service of the rule on the bankrupt on August 28, 1940, the bankrupt had $676.57 in the "Ward" bank account. On September 6, 1940, bankrupt filed his affidavit in opposition to the order to show cause, in which he denied that he had a bank account at the Security-First National Bank of Los Angeles at the time of the service of the order (Vol. II, p. 39-40).

The wife of the bankrupt, Anne Gould Strotz, died September 13, 1938 (Vol. I, p. 36). The bankrupt was the residuary legatee under her will. The bankrupt was appointed executor of her estate October 25, 1938, and no inventory was filed until March 12, 1940 (Vol. I, p. 309). From the time of his appointment as executor until March 1940, the bankrupt received, as executor of the estate, approximately $19,000 (Vol. I, p. 36). The bankrupt testified as follows:

> (Vol. I, p. 140) "I received the first of this money in 1939, and the last of it in February, 1940. With this money, I went to Honolulu and to New York and to Chicago, and I tried to make arrangements to settle my other accounts."
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> (Vol. I, p. 141) "Most of this money I kept in cash. I may have deposited one or two thousand dollars in the account I had in the name of F. J. Ward. When I say I kept it in cash I mean cashier's checks drawn on the Security-First National Bank. I received the money at different times. I used some of it for living expenses and some for trips."

The bankrupt further testified with respect to funds he withdrew from his wife's estate as follows: [158]

> (Vol. II, p. 45-46) "I issued a check on the Hollywood and Cahuenga Branch of the Security-First National Bank of Los Angeles of the estate of Anne Gould Strotz by Harold C. Strotz, executor, for $11,500.00, payable to the order of myself. I took this check and received in return for the same cashier's checks aggregating the sum of $11,500.00."

(Vol. II, p. 49) "I took this money out to pay certain bills, and I drew it out because I will admit I was afraid my bank account might be attached in some form or other."

(Vol. II, p. 50) "At the time I drew this money from the estate account, I kept it in cashier's checks. I had this checking account in the name of F. J. Ward."

(Vol. II, p. 51) "I have been insolvent since December, 1929."

(Vol. II, p. 95) Witness shown check dated October 20, 1939, drawn on the estate of Anne G. Strotz account for $1,000.00 and testified (p. 96) that it was drawn without a court order. The check was made payable to Harold Strotz.

(Vol. II, p. 97) "I don't know what I did with that particular money."

(Vol. II, p. 98) Bankrupt shown check of estate dated July 1, 1939, payable to bankrupt in the sum of $4,000.00.

(Vol. II, p. 99) "I did not have a court order from the probate court of Los Angeles County authorizing that withdrawal. I believe I took $2,000.00 of this money with me to Honolulu. I have no record of what I did with it. This withdrawal of $4,000.00 on July 1, 1939, was made after I deposited $5,000.00 in the account of the estate of Anne Gould." [159]

(Vol. II, p. 102) "I was the residuary beneficiary of the estate and withdrew funds from the estate account from time to time and used those funds for my personal benefit."

(Vol. II, p. 103) "The estate of Anne Gould was opened in October, 1938, and no inventory was filed until March 12, 1940."

(Vol. II, p. 113-114-115-116) Bankrupt shown check (trustee's Exhibit No. 6) for $11,500.00 drawn on the estate account of Anne G. Strotz payable to bankrupt and bankrupt testified that in exchange for this check he received the following cashier's checks, dated February 26, 1940: Check No. 777,205 for $3,600.00 payable to Harold C. Strotz. Check No. 777,207 for $1,500.00 payable to Harold C. Strotz. Check No. 777,204 payable to Sidney M. Strotz, brother of bankrupt for $3,000.00. Check No. 777,201 payable to Bekins Van & Storage Company for $800.00. Check No. 777,202 payable to Guy M. Peters for $500.00. Check No. 777,203 payable to Hamilton Vose, Junior, for $500.00. These checks total $9,700.00. "I don't remember whether I received the balance of the $11,500.00 in cash. The check No. 777,205 for $3,600.00 was cashed by me March 1, 1940."

(Vol. II, p. 116) "With reference to the check made out to my brother, Sidney M. Strotz for $3,000.00, within a week after the check was issued, I received in return for that check the personal check of my brother for $3,000.00 drawn on the First National Bank of Chicago."

(Vol. II, p. 177) "When the personal check for $3,000.00 was received back from my brother, I deposited [160] it in the bank account I had in the name of F. J. Ward. When I received this personal check of my brother's for $3,000.00 he said he would

not accept it as I needed it more than he did. I sailed for Honolulu July 27, 1939, and returned September 13, 1939."

Objections to Findings by Referee in His Certificate Under Heading "Evidence"

At page 3, lines 26 to 32, the Referee lists seven cashier's checks aggregating $11,500 covering withdrawals from the account of the Estate of Anne Gould Strotz, deceased, on February 26, 1940. At page 4, lines 8 and 9, the Referee states, "the bankrupt's testimony discloses that a number of these checks were issued to creditors." It appears from the listing of said checks by the Referee (p. 3) that two of said checks, one for $3600 and one for $1500, were issued to the bankrupt. Another of said checks was issued to the bankrupt's brother in the sum of $3000. The bankrupt testified:

(Vol. II, p. 116) "With reference to the check made out to my brother, Sidney M. Strotz for $3,000.00, within a week after the check was issued, I received in return for that check the personal check of my brother for $3,000.00 drawn on the First National Bank of Chicago."

The following statement is made by the Referee at page 5 of his certificate:

"No creditor, other than those two mentioned, was in a position to levy upon the bankrupt's bank account from the time the account in the name of F. J. Ward was opened in 1938 until the same was closed. If the bankrupt feared a levy of attachment or execution by any person other than his former wife, no mention is made of such person by name." [161]

The record shows that on September 6, 1939, the bankrupt was served with a summons and complaint in an action filed in the Superior Court of Los Angeles County entitled Martin T. O'Brien, as Receiver of the Reliance Bank and Trust Company, v. Harold C. Strotz (Vol. II, p. 23). On October 23, 1939, an agreement was made between the bankrupt and this creditor that until further notice the bankrupt would not be required to answer this complaint and in the meantime the bankrupt would attempt to make a settlement (Vol. I, p. 304-305). On August 21, 1940, Judge Wilson of the Superior Court in said case issued an order upon the bankrupt to show cause why he should not be restrained from transferring, hypothecating, or creating any lien upon any and all moneys, credits, or other things of value owned by or in possession or under the control of the Security-First National Bank of said Harold C. Strotz (Vol. II, p. 39-40), was returnable August 30, 1940, and was served on the bankrupt August 28, 1940. At the time of the service of the rule on the bankrupt on August 28, 1940, the bankrupt had $676.57 in the "Ward" bank account. On September 6, 1940, bankrupt filed his affidavit in opposition to the order to show cause, in which he denied that he had a bank account at the Security-First National Bank of Los Angeles at the time of the service of the order (Vol. II, p. 39-40).

The objections to the findings of the Referee generally are set forth in the Petition for Review.

RECONSTRUCTION FINANCE CORPORATION

By Jacob J. Lieberman
Frank Michels

Its Attorneys

[Endorsed]: Filed Jan. 14, 1943. [162]

United States District Court
Southern District of California
Central Division

No. 37,302-M. In Bankruptcy.

In the Matter of
HAROLD C. STROTZ,
Bankrupt.

MEMORANDUM AND ORDER RE-REFERRING PROCEEDINGS TO REFEREE.

This is a review of the referee's order dated December 2, 1942, overruling numerous objections by petitioner on review, Reconstruction Finance Company, to an amended plan of arrangement under Chapter XI of the National Bankruptcy Act, and approving said plan proposed by the bankrupt. (For brevity, petitioner on review is hereinafter referred to and called R.F.C.).

From the record and the evidence before us the following factual situation is revealed: On October 22, 1940, the bankrupt, Harold C. Strotz, filed a voluntary petition in bankruptcy and on the following day was adjudicated a bankrupt. Schedules attached to the petition show liabilities of $1,881,830.86, and assets totaling $625.00. A substantial portion of the liabilities resulted from the bankrupt's financial losses in the stock market and as a further result of statutory liability imposed upon the bankrupt as a former officer and director of banks in Chicago, Illinois.

The claim of R.F.C., now amounting to $340,566.44, and allowed by the referee, is based upon a promissory note dated August 12, 1930, signed by the bankrupt and

nine other directors of the Madison Square Bank in Chicago, Illinois, upon which note the Madison Square Bank received [163] from the payee, the Central Republic Bank and Trust Company, a check for $210,000.00. Thereafter the Central Republic Bank and Trust Company pledged the note to R.F.C. as part security for a loan in the sum of $90,000,000.00.

Within the time allowed for filing, eleven claims totaling $974,848.64, were filed in the bankruptcy proceedings. One claim in the sum of $245,811.25 was rejected, leaving allowed claims in the sum of $729,037.39. Among the claims filed and not objected to by the trustee, and which was allowed by the referee, is the claim of W. E. Deming, agent for Eugenia Volentine, in the sum of $168,410.85, based upon five promissory notes executed by the bankrupt in Chicago on January 14, 1932, due two, three and four years after date of execution and payable at Taylorville, Illinois.

On March 21, 1941, R.F.C. filed its specifications of objections to discharge and alleged therein, but without mention of the so-called Vollentine claim, that the bankrupt failed to keep or preserve books of account and records, and that he failed to explain satisfactorily his deficiency of assets, and that the bankrupt subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy by numerous specified acts transferred, destroyed and concealed his property with intent to hinder, delay or to defraud his creditors. Prior to a complete determination of these objections, the bankrupt on April 30, 1941 filed a petition for an arrangement of his obligations under Chapter XI of the National Bankruptcy Act, and offered his creditors the sum of

$10,000.00, together with a ten per cent interest which he may have had as a beneficiary under the last will and testament of his father, which will contained spendthrift provisions against [164] anticipating or assigning the same.

On July 2, 1941, an amended petition of arrangement was filed in substance similar to the original plan except that $25,000 obtainable by bankrupt by loan from his step-son was offered to the creditors. To this R.F.C. filed objections and alleged those matters set forth in its original objections to the bankrupt's discharge. On May 27, 1942 the bankrupt again amended his petition for an arrangement by including an offer of an additional $7,000, thereby offering to his creditors a total of $32,000 borrowed money, in addition to the ten per cent in the will of his deceased father. The latter plan was accepted by all creditors whose claims had been allowed by the referee, except R.F.C., which objected to the plan upon the grounds that the bankrupt had committed the acts specified in the previous objections to discharge, and upon an additional ground that the Volentine claim, because barred by the statute of limitations was not an allowable claim and that, eliminating this claim, a majority in number and amount required by section 362 of the Bankruptcy Act had failed to accept the proposed plan of arrangement. The referee found that the evidence in support of the objections to the bankrupt's discharge was insufficient to warrant denying a discharge and that therefore refusal of confirmation of the bankrupt's plan of arrangement is not justified by the record. The referee further concluded that as an action could be maintained in Illinois upon the promissory notes constituting the Vollentine claim because the Illinois stat-

ute of limitations had not run against such notes, the requisite majority in number and amount had duly approved the proposed plan.

As the statute of limitations applicable is that [165] of the State of California and not that of the State of Illinois, we are unable to agree with the latter conclusion of the referee, and it therefore becomes unnecessary to consider the other alleged errors asserted by R.F.C.

Section 362 of the Bankruptcy Act relates to the acceptance and confirmation of a proposed arrangement and requires that an application for the confirmation of the arrangement may be filed only after the plan has been accepted in writing by a majority in number and amount of all creditors affected by the arrangement whose claims have been previously proved and allowed. Section 307 of the Act provides in effect that "creditors" shall include holders of all unsecured claims of whatever character against a debtor whether or not provable under section 63 of the Act; and "debts" or "claims" shall include unsecured demands of whatever character whether or not provable under said section 63. The proceeding before the court is not one in the nature of an arrangement for an extension of time for payment of debts in full and, in our opinion, section 302 relating to the applicability of the other provisions of the Bankruptcy Act apply so as to affect provability of a claim or at least the allowability of a claim where it is barred by the statute of limitations. In re Lipman, 94 Fed. 353; In re Resler, 95 Fed. 804; In re Putnam, 193 Fed. 464, affirmed 194 Fed. 793; Collier on Bankruptcy, 14th Ed., Vol. 3, p. 1801, et seq.

Although enforcement of the Vollentime claim may not have been barred under the Illinois ten-year statute of

limitations, section 17, chapter 83, Revised Statutes, Illinois, 1921, nevertheless the statute of limitations controlling the allowance of the claim is that of the state in which the bankruptcy proceedings are pending. In re [166] Povill, 105 F. (2d) 157, (C. C. A. 2); In re German American Improvement Co., 3 F. (2d) 572, (C. C. A. 2); Biggs, Com'r vs. Mays, 125 F. (2d) 693, (C. C. A. 8). The limitation on the time of judicial enforcement of claims is procedural and is governed by the law of the forum, McElmoyle v. Cohen, 38 U. S. 312.

In California where a citizen of another state creates an obligation in writing in the state of his domicile and later removes his residence to California, the four-year statute of limitations begins to run in his favor upon his removal to California so as to finally bar recovery upon the obligation, although it may yet have been payable in the former state. McKee v. Dodd, 152 Cal. 637; Dougall v. Schulenberg, 101 Cal. 154; Sullivan v. Shannon, 25 Cal. App. (2d) 422; Chappell v. Thompson, 21 Cal. App. 136. The bankrupt having removed his residence to this state in 1934, the California four-year statute of limitations would bar consideration of the so-called Vollentime obligation as a provable and allowable claim within the meaning of section 63 of the Act if residence in the State of California for the whole applicable period is established by satisfactory evidence.

The fact that the notes evidencing the obligations contained "confession of judgment" provisions does not operate to estop the assertion of the defense of the statute of limitations. Such provisions would not authorize a "confessed judgment" and the creator of the obligation

may still avail himself of the defense. Harper v. DeWitt, 10 Cal. (2d) 467; First National Bank v. Terry, 103 Cal. App. 501.

It appears from the record before us that the bankrupt does not deny that an interested creditor, such as [167] R.F.C. in this matter, may oppose a claim by setting up the statute of limitations as a barrier to its effective allowance by the court in considering a plan of arrangement under Chapter XI of the Bankruptcy Act. Such is the necessary and established right of petitioner on review.

Section 57(d) of the Act provides that claims which have been duly proved shall be allowed upon receipt by or upon presentation to the court. Such claims and no others are to be allowed by the referee. Bankruptcy proceedings are largely a matter of administration by the referee, and the above section especially imposes upon the referee a duty to see that an estate or the fruits of an arrangement in bankruptcy is not distributed among those who fail to prove their legal right to share therein. A referee is more than an arbitrator in matters referred to him. He has the duty to examine the proofs filed and to determine their legal sufficiency. In re Owl Drug Co., 84 F. (2d) 342, (C. C. A. 9); In re Gobel Boat Co., 190 Fed. 92; In re Noble, 15 F. Supp. 648; and when a creditor in some form calls the attention of the court to a patently stale claim, the referee should sua sponte under the provisions of sections 2(2) and 57(k) examine it and determine its validity—and this the referee should do whether the trustee or the objecting creditor raises specific objections to the sufficiency of the proof filed or not.

Our examination of the voluminous record before us on this review shows that it is not sufficiently clear and certain to establish or disestablish as to whether the so-called Vollentine claim may properly be allowed and counted in determining whether adequate creditors have accepted the bankrupt's plan of arrangement.

Accordingly this matter is rereferred to the referee [168] to proceed in accordance with the views herein expressed and to determine the ultimate validity and effectiveness of the so-called Vollentine claim. Exceptions allowed bankrupt, trustee and Reconstruction Finance Corporation.

Dated May 15, 1943.

PAUL J. McCORMICK
United States District Judge.

Order entered May 15, 1943. Docketed May 15, 1943. Book 16, page 684. Edmund L. Smith, Clerk, by B. B. Hansen, Deputy.

Notation made in Bankruptcy Docket on May 15, 1943, pursuant to Rule 79(a), Civil Rules of Procedure.

Edmund L. Smith,
Clerk U. S. District Court, Southern District of California
By B. B. Hansen,
Deputy.

[Endorsed]: Filed May 15, 1943. [169]

[Title of District Court and Cause.]

BRIEF OF RECONSTRUCTION FINANCE CORPORATION OF FACTS UPON ITS OBJECTIONS TO BANKRUPT'S DISCHARGE AND PLAN OF ARRANGEMENT

This matter remains pending on the original petition of the RFC, a creditor of the bankrupt, who filed its claim herein for $340,566.45, to review orders entered by Referee Utley December 2, 1942, as follows:

1. Granting a discharge to the bankrupt and overruling the objections of the RFC thereto.

2. Confirming a plan submitted by the bankrupt under Section 321 of Chapter XI of the Bankruptcy Act and overruling the objections of the RFC to said plan.

3. Allowing a claim of Eugenia Vollintine for $168,410.85 and overruling the objections of the RFC to said claim for the reason that same was barred by the statute of limitations.

The record discloses the following:

October 22, 1940, voluntary petition in bankruptcy filed.

March 19, 1941, RFC filed objections to discharge of bankrupt. The specifications upon which the RFC now relies are (a) failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained; (b) the bankrupt at a time subsequent to the first day of [170] twelve months immediately preceding the filing of the petition in bankruptcy concealed or permitted to be concealed his property with intent to hinder, delay, or defraud his creditors.

April 13, 1941, bankrupt filed plan of arrangement under Section 321 of Chapter XI offering $10,000.

July 2, 1941, amendment to plan of arrangement filed by bankrupt offering $25,000.

May 27, 1942, amendment to plan filed by bankrupt offering $32,000. This is the plan which was approved by the Referee and is now before the Court.

By stipulation of the parties, the examinations had under Section 21a of the Bankruptcy Act and upon a petition of the Trustee to recover certain assets transferred to F. J. Ward were considered as evidence in support of the objections of the RFC to the bankrupt's discharge and plan of arrangement. This evidence is incorporated in two volumes, together with certain exhibits, transmitted by Referee Utley upon the original petition for review.

There is submitted herewith the relevant portions of these transcripts bearing upon the question of the objections of the RFC to the bankrupt's discharge and plan of arrangement. In addition to the transcript, Trustee's Exhibit 2 has been transmitted by Referee Utley. This exhibit has an important bearing upon this case and consists of the bank statement of the Security-First National Bank of Los Angeles showing the amount of withdrawals and deposits made by Strotz in the bank account of F. J. Ward. In our analysis of the evidence we shall discuss this exhibit. Reference will also be made to a letter of Referee Utley to counsel for the RFC dated December 2, 1942, and filed in this proceeding by leave of this Court on February 8, 1943, which, in our opinion, has an important bearing upon the matter before the Court.

The evidence taken before Referee Utley upon this question disclosed the following: [171]

That the bankrupt is the son of Charles Nicolas Strotz who was at the time of his death a resident of Chicago, Illinois, and whose will was probated in the Probate Court of Cook County, Illinois, under which will a trust was created of which the First National Bank of Chicago and the bankrupt are the trustees. The corpus of the said trust is approximately one million dollars and the annual income therefrom is over $30,000 (Vol. I, p. 17 transcript). Said trust under its terms terminates upon the death of the mother of the bankrupt, and upon the happening of said contingency the bankrupt, if he survives his mother, under the terms of said will receives one-third of the corpus of said trust. An assignment of the said future interest of the bankrupt in said trust was made many years prior to the filing of the petition in bankruptcy, to a creditor whose claim has not been filed in this proceeding. Said trust agreement contains a spendthrift clause which prohibits the assignment of the interest of any of the beneficiaries under said trust during the term of its existence, and under the laws of the State of Illinois said provision is valid and said assignment is void.

The bankrupt admitted in his testimony that from December 13, 1938, to August 30, 1940, he maintained a bank account in the name of F. J. Ward at the Security-First National Bank at Los Angeles, California. During said period he made 66 deposits aggregating $26,260.16 and drew 308 checks aggregating $26.260.16 (Trustee's Exhibit 2). Each month he destroyed the canceled checks

and kept no books or records covering said transactions. The bankrupt with respect to this bank account testified:

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> (Vol. I, p. 140) "I received the first of this money in 1939, and the last of it in February, 1940. With this money, I went to Honolulu and to New York and to Chicago, and I tried to make arrangements to settle my other accounts."
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> (Vol. I, p. 141) "Most of this money I kept in cash. I may have deposited one or two thousand

dollars in the account I had in the name of F. J. Ward. When I say I kept it in cash I mean cashier's checks drawn on the Security-First National Bank. I received the money at different times. I used some of it for living expenses and some for trips."

The bankrupt further testified with respect to funds he withdrew from his wife's estate as follows:

(Vol. II, p. 45-46) "I issued a check on the Hollywood and Cahuenga Branch of the Security-First National Bank of Los Angeles of the estate of Anne Gould Strotz by Harold C. Strotz, executor, for $11,500.00, payable to the order of myself. I took this check and received in return for the same cashier's checks aggregating the sum of $11,500.00."

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(Vol. II, p. 103) "The estate of Anne Gould was opened in October, 1938, and no inventory was filed until March 12, 1940."

(Vol. II, p. 113-114-115-116) Bankrupt shown check [175] (Trustee's Exhibit No. 6) for $11,500.00 drawn on the estate account of Anne G. Strotz payable to bankrupt and bankrupt testified that in exchange for this check he received the following cashier's checks, dated February 26, 1940: Check No. 777,205 for $3,600.00 payable to Harold C. Strotz. Check No. 777,207 for $1,500.00 payable to Harold C. Strotz. Check No. 777,204 payable to Sidney M. Strotz, brother of bankrupt for $3,000.00. Check No. 777,201 payable to Bekins Van & Storage Company for $800.00. Check No. 777,202 payable to

Guy M. Peters for $500.00. Check No. 777,203 payable to Hamilton Vose, Junior, for $500.00. These checks total $9,700.00. "I don't remember whether I received the balance of the $11,500.00 in cash. The check No. 777,205 for $3,600.00 was cashed by me March 1, 1940."

(Vol. II, p. 116) "With reference to the check made out to my brother, Sidney M. Strotz for $3,000.00, within a week after the check was issued, I received in return for that check the personal check of my brother for $3,000.00 drawn on the First National Bank of Chicago."

(Vol. II, p. 177) "When the personal check for $3,000.00 was received back from my brother, I deposited it in the bank account I had in the name of F. J. Ward. When I received this personal check of my brother's for $3,000.00 he said he would not accept it as I needed it more than he did. I sailed for Honolulu July 27, 1939, and returned September 13, 1939."

On August 7, 1942, Referee Utley rendered a memorandum of decision upon the question of discharge and plan in which he made many statements which were restricted by him in his subsequent order of December 2, 1942. There is one statement contained in [176] this memorandum of decision of August 7, 1942 to which we desire to direct the Court's attention. The Referee (p. 6) stated that from the evidence before the Court it appeared that the RFC had co-signers on the obligation against the bankrupt, one being the estate of John T. Cunningham, deceased, which is financially responsible and will be compelled to pay the claim of the RFC in

full whether it receives a dividend from this estate or not, and that the RFC would therefore in no way be damaged by the approval of this plan. No such evidence appears in the record.

In Referee Utley's order of December 2, 1942 (par. 24), the Referee found that the Cunningham estate is contesting its liability in the Illinois courts upon this obligation and that even though the RFC prevailed in its claim against the Cunningham estate there would be insufficient assets to pay its claim in full. The RFC now shows and represents to the Court that no payment whatsoever has been made upon its claim, that its claim filed in this proceeding remains wholly unsatisfied.

On December 2, 1942, Referee Utley entered an order granting the bankrupt's discharge and approving the plan of arrangement. The RFC filed its petition to review the order of Referee Utley of December 2, 1942, and its specific objections to that order will be found at pages 25 to 40 of the petition for review.

On the same day that the order appealed from was rendered, Referee Utley sent a letter to counsel for the RFC, which was filed in this proceeding by leave of this Court on February 8, 1943. This letter was offered by the RFC to rebut any presumption that may be claimed as to the correctness of Referee Utley's order of December 2, 1942. In that letter he stated, "upon the cold question of whether the bankrupt would be entitled to a discharge independent of the plan of arrangement offered, I think your contention would be correct." This statement taken together with a statement found at page 7

of the original memorandum of decision of Referee Utley [177] wherein he stated,

> "I do not feel that the evidence establishes a clear and convincing case of fraudulent concealment of assets as contemplated by Section 14-c of the Bankruptcy Act."

indicates that Referee Utley refused to follow the plain provisions of 14c of the Bankruptcy Act with regard to the question of burden of proof. This section does not require the objector to prove his case by "clear and convincing" evidence. It provides that the objector is required to "show to the satisfaction of the court that there are reasonable grounds for believing the bankrupt has committed" the acts. The section further provides that "then the burden of proving that he has not committed any such acts shall be upon the bankrupt."

The Referee made no finding as to whether "there are reasonable grounds" to believe that the bankrupt committed the acts charged and did not state or find whether the bankrupt had sustained the burden placed upon him by Section 14c to show that he has not committed such acts.

The Referee did state in his letter of December 2, 1942 that upon the question of whether the bankrupt would be entitled to his discharge independent of the plan of arrangement, he considered our objections to the discharge good. This indicates the Referee refused to follow the provisions of the Act which provides that a plan shall not be approved if "the debtor has been guilty of any of the acts or failed to perform any of the duties which would be a bar to the discharge of the bankrupt." If

the Referee, as stated in this portion of his letter, found that the objections of the RFC were sound, it was mandatory upon him to deny the discharge and disapprove the plan.

The evidence bearing upon the question of discharge was proven by the unqualified admissions of the bankrupt. He admitted that the purpose of depositing his money in the Ward bank account [178] was to avoid "attachment" by creditors. There was no conflict of the evidence upon that issue.

In the letter of December 2, 1942, the Referee further stated:

> "However, I cannot bring myself to the point, under the facts in this case, of saying that the bankrupt is not entitled to a discharge when it would mean, in effect, that I would literally pitch into the fire $32,000.00, which all creditors except the Reconstruction Finance Corporation, have expressed a desire to have and which they would not get if his discharge were denied. I feel that such an order would be of greater punishment to the creditors than to the bankrupt and would be a far greater detriment to them. Possibly this position forces me to require stricter proof upon the question of discharge in so far as the objector is concerned, than I would otherwise require but if creditors are to be denied the right to the funds in question, under the circumstances of the case, I much prefer that a higher court makes such an order."

Here the Referee states that he has required "stricter proof" from the RFC because of the fact that the other creditors accepted the plan. Here again the Referee in-

dicated that he did not follow the provisions of 14c of the Bankruptcy Act under which the burden of proving that he has not committed any acts to prevent his discharge is upon the bankrupt, when it appears from the evidence of the objector that there are reasonable grounds for believing the bankrupt has committed such acts. The RFC is the largest individual creditor who has filed a claim against this estate. If the Vollintine claim is disallowed, its claim will exceed the aggregate of all other claims. Under the terms of the plan, costs of administration are first deducted. The amount of any dividend paid under the plan would be very small. The RFC, because of the amount of its claim, is the party whose interest is affected by the plan more than that of any other individual creditor. In this connection we desire to direct the Court's attention to the fact that after this case was re-referred to the Referee by this Court, that upon the hearing before Referee Laugharn one of the creditors who originally accepted the plan filed his written withdrawal of his [179] consent thereto.

A case arose in the Seventh Circuit upon almost the identical statement of facts in the case of In re Manasse, 125 Fed. 2d 647, C. C. A. 7th Cir. decided March 5, 1942. The facts in that case were as follows:

> "Appellant married in June 1933, and a few days thereafter, a checking account was opened in the name of his wife with her personal funds in the amount of $250. (The record elsewhere shows that on the day following their marriage, her mother gave her the sum of $1500 which represented savings by the mother from contributions made by her out of her earnings for the eight years preceding.) Appellant

had a power of attorney in this account and used it in all ways as his own, signing checks and depositing and withdrawing funds, his own and those of his clients. The same system was employed with respect to other bank accounts opened from time to time with funds of the wife to take the place of accounts closed for various reasons. For a period of about three years, to January 1938, appellant and his wife maintained a joint checking account, but with the exception of this, appellant's name never appeared on any of the accounts although he used each account in his wife's name very extensively in carrying on his profession." (p. 648)

The objections to the bankrupt's discharge were failure to keep books and concealment of assets within twelve months preceding the filing of the bankruptcy petition.

The court in sustaining the objections to the discharge said (p. 650):

"We are convinced that, in spite of appellant's assertion to the contrary, the evidence of appellant himself amply supports the conclusion of the referee [180] that 'the account in question was opened not for the purpose of protecting the wife's money from the claim of creditors of the bankrupt, but was maintained for the purpose of placing the money of the bankrupt beyond the reach of his creditors, and that the whole purpose of the bank account and of the account shown on the bankrupt's books was to enable the bankrupt to have a convenient place of depositary for his funds, which being ostensibly the property of the wife was not subject to execution on behalf of his creditors. It is difficult to believe

that if the bankrupt were not hopelessly insolvent, he would have adopted the device he did adopt of establishing the bank account in the name of his wife and maintaining on his books of account the elaborate records he did maintain, purporting to show debits and credits as between himself and his wife.' "

* * *

"We repeat that the charge against appellant is not failure to keep books, but instead is failure to keep books from which financial condition may be ascertained. It seems clear to us that evidence of any device by which true financial condition is concealed may be used to support the charge as made. Cf. In re Biro, 2 Cir., 107 F. 2d 386."

In the original memorandum of authorities filed in this case by Mr. Garbus, the bankrupt's attorney, it was contended that this case was not applicable to the case at bar. At page 2 of this memorandum it was argued:

"(a) In that case the order of the Referee was affirmed although the order was one denying discharge."

This, of course, does not distinguish the case.

"(b) In that case the bankrupt maintained a bank [181] account in his wife's name without disclosing to the bank, nor did the bank records show, that he was the owner of said bank account. In our case the bankrupt did disclose to the bank and the bank's records did show that he had an interest in the F. J. Ward bank account, and that the bankrupt could withdraw moneys from said account upon his check and signature."

There is nothing in the case at bar to indicate from the bank's records that the bankrupt had any interest in the Ward bank account. The signature card merely indicated that he had a right to sign checks upon the account as Ward's agent. In this respect the facts are identical with that of the Manasse case. The court in the Manasse case stated the facts to be:

> "Appellant had a power of attorney in this account and used it in all ways as his own, signing checks and depositing and withdrawing funds, his own and those of his clients. The same system was employed with respect to other bank accounts opened from time to time with funds of the wife to take the place of accounts closed for various reasons. For a period of about three years, to January 1938, appellant and his wife maintained a joint checking account, but with the exception of this, appellant's name never appeared on any of the accounts although he used each account in his wife's name very extensively in carrying on his profession."

Mr. Garbus further contended in his memorandum:

> "(c) In that case the bankrupt failed to disclose the existence of a bank account in his schedule of assets, whereas in our case the bankrupt did disclose the existence of said account in his schedule."

The disclosure was not made in the schedule. It was made in the "Statement of Affairs" required under the Supreme Court rules. [182]

In the form prescribed by the Supreme Court the bankrupt was required to answer the following interrogatory:

> "4a. What bank accounts have you maintained, alone or together with any other person, and in your

> own or any other name, within the two years immediately preceding the filing of the original petition herein?"

The disclosure of the Ward bank account was made in response to this question. The bankrupt had no alternative unless he committed perjury.

The basis of the objections to the discharge was not that the bankrupt did not make the disclosure "after" he filed his petition but that he failed to do so within twelve months immediately preceding the filing of the petition. When this disclosure was made by the bankrupt after he had filed his petition, he had within twelve months immediately preceding the filing of the petition dissipated approximately $30,000.

Mr. Garbus also contended:

> "(d) In the case the court commented upon the fact that the bankrupt was a lawyer and certainly knew, in opening an account in his wife's name, that he intended to defraud, delay and hinder his creditors."

In the case at bar the bankrupt admitted his intent. He testified that his purpose was to avoid having creditors attach his money.

Mr. Garbus also contended:

> "(e) In that case the court found that the bankrupt opened the account in his wife's name with intent to conceal his money from his creditors, whereas in our case the Referee found to the contrary."

We concede that the Referee found to the contrary in this case, but we insist that the Referee's finding is with-

out any basis and is against the uncontradicted admissions of the bankrupt as detailed in our petition for review and in our objections to the Master's [183] certificate thereunder.

Under point II of additional points and authorities, p. 8 of the answering points and authorities originally filed by Mr. Garbus, the case of Bailey v. Ross, 53 Fed. 2d 783, is relied upon in support of his contention that "the bankrupt intended no more than to rehabilitate himself financially at a time when he was endeavoring to make settlements with his creditors." The facts in the Bailey v. Ross case are essentially different from those in the case at bar. The facts in Bailey v. Ross, as shown by the opinion of the court at p. 784, are as follows:

> "The bankrupt was an honest straightforward young farmer who made a persistent but unsuccessful effort to get out of debt. He owned personal property of the value of about $2,500. All of it was mortgaged to his local bank to secure an indebtedness of about $2,200. The bank was about to foreclose; the bankrupt wanted the bank to carry him through another crop, and to advance him some more money. Other creditors were pressing him, and the bank was unwilling to carry him further unless he would make a bill of sale to his wife. This the bankrupt did; but he did so, not with any intent to defraud creditors, but to secure further advancements from the bank and to prevent an immediate foreclosure. The bank then took a mortgage from the wife. Several months thereafter another creditor, ignoring the transfer, levied an execution on the mortgaged property. The bank advanced another $1,000

on this slender security and paid off the execution creditor. The validity of the bank's mortgage has not been challenged."

The objecting creditor contended that the effect of the transfer was to hinder and delay creditors. [184]

Here is how Howard C. Strotz, the bankrupt, tried to rehabilitate himself.

In a period of less than two years (Dec. 13, 1938 to Aug. 30, 1940) he deposited and withdrew in the Ward bank account (Exhibit 2)		$26,260.16
He withdrew from the estate of his wife (Vol. I, p. 36)		18,000.00
Total		$44,260.16
Paid to creditors:		
Guy M. Peters (his Chicago lawyer)	$500.00	
Bekins Van and Storage Company	600.00	
Hamilton Vose, Jr.	500.00	1,600.00
Unaccounted for (Except that $2,000 was spent for a pleasure trip to Honolulu)		$42,660.16

The Referee did not find that the bankrupt was trying to rehabilitate himself. Referee Utley did, however, express himself upon this subject during the hearing. We have incorporated these statements in our petition for review pages 31 to 32, and they appear at pages 11 and 12 of the abstract of transcript submitted herewith. These

statements show that the Referee did not share this view of bankrupt's counsel at the time of the hearings before him.

(Vol. II, p. 169-172) "The Referee: Well, Mr. Strotz testified here, and he has been very frank about it, in substance that he put this money where it could not be attached. Mr. Garbus: Which money is that? The Referee: Put it in Mr. Ward's bank account. Mr. Garbus: There wasn't any money then—just a few hundred dollars. The Referee: Any other construction of his testimony in that regard would certainly be a very, very strange construction." [185]

"Mr. Garbus: Yes, but this reflects upon the bankrupt, and you know very well if it is to be brought in on the charge of fraud on the part of the bankrupt I will resist it to the last, and every attorney should. Your Honor, Mr. Strotz testified he opened this bank account solely for the purpose of giving him the opportunity not to be harassed by attachments. That is true. He made the general statement but he had in his mind his ex-wife, but that is not a wrong as far as his creditors— The Referee: Let us see whether or not it is. If he did put this money in the bank so he could have paid creditors and had used it for that purpose then there might be something to your argument, but where he carries the bank account and uses it for every other conceivable purpose other than that I think a different inference has to be drawn from it. Mr. Garbus: Your Honor, would your Honor say then that the law is a man who is in debt must wear his heart on his sleeve, as far as his creditors are concerned? That

is not the law. The law is a man in debt has a right to prefer one creditor over another, he has the right to invest his money in a speculation, he has a right to buy things he needs, an automobile and clothing— The Referee: If there has been any kind of preferring one creditor over another I have not seen it because I have not seen any evidence where any creditor got money, so there is no preferring one creditor over another. They have been all very much in the same class, they have not gotten anything, as far as the testimony is concerned." [186]

Plan of Arrangement Offered by Bankrupt

The bankrupt did not make an offer to his creditors until after objections to his discharge were filed. He was not in any business, so that this is not a case of a bankrupt trying to reorganize a going business. He first offered $10,000; that was rejected. He then offered $25,000 which was rejected. The present offer made nineteen months after the filing of the voluntary petition for adjudication was $32,000. This is a clear case of a bankrupt trying to bargain with his creditors and the Court for the purpose of buying his discharge. Before a plan of arrangement can be approved under the Bankruptcy Act it must appear:

1. That it be accepted in writing by a majority in number and amount of creditors.
2. That it is for the best interest of creditors.
3. That it is fair, equitable and feasible.
4. That the debtor has not been guilty of any acts or failed to perform any of the duties which would be a bar to the discharge of a bankrupt.
5. That the proposal be in good faith.

It is our contention that none of these objections have been met.

Whether the plan had been accepted in writing by a majority in number and amount of creditors depends upon the ruling of this Court upon our objections to Referee Laugharn's supplemental report on the Vollintine claim. Upon the question of whether the plan is for the best interest of creditors it is difficult to perceive how the creditors are better benefited by the acceptance of a small dividend out of the gross sum of $32,000, from which the cost of administration must first be paid, rather than take their chances upon the bankrupt surviving his mother, in which event he will receive outright a third of a million dollars, which, in the event of the Court's denying his discharge, would be subject to the claims of creditors. The record in this case [187] discloses that the plan is neither fair nor equitable. The record likewise discloses that the bankrupt, by his own admissions, has committed acts which would bar his discharge. The proposal is not in good faith, as demonstrated by the fact that the first offer was not made until thirty days after the RFC had filed objections to his discharge, and the last offer was not made until more than nineteen months after the filing of the original voluntary petition for adjudication.

The RFC is the largest creditor of this bankrupt estate. It has more at stake than any other creditor. It is our contention that its claim exceeds in amount the aggregate of all other provable claims and it has a greater interest than any other creditor upon the question of whether this plan should be confirmed. It is apparent that the sole reason that the Referee granted the dis-

charge and approved the plan was the fact that the other creditors have accepted the plan. (One of the other creditors has since withdrawn his consent to the plan.)

Referee Utley had no right to disregard the fact that the bankrupt had admitted an act which would bar his discharge in bankruptcy or to say that because the bankrupt has now offered an amount that is equal to that which he concealed from his creditors that he will disregard the provisions of Section 14c of the Bankruptcy Act, the decision of the Circuit Court of Appeals of this circuit in the case of Averill vs. Quittner, 131 Fed. (2d) 312, and arbitrarily confirm the plan of arrangement offered by the bankrupt. Such action is repugnant to the purposes of the Bankruptcy Act, which is to afford relief to honest debtors who have not committed any of the acts which would bar their discharge.

Under the uncontradicted evidence, the order of Referee Utley entered December 2, 1942, granting the bankrupt his discharge [188] and confirming the amended plan of arrangement of the bankrupt should be set aside.

Respectfully submitted,

FRANK MICHELS and
JACOB J. LIEBERMAN,
Attorneys for Reconstruction Finance Corporation.

Frank Michels
Of Counsel.

[Endorsed]: Filed Mar. 27, 1944. [189]

[Title of District Court and Cause.]

PORTIONS OF TRANSCRIPT SUPPORTING OBJECTIONS OF RECONSTRUCTION FINANCE CORPORATION TO BANKRUPT'S DISCHARGE AND PLAN.

Objection I

Failure to Keep Books and Destruction of Records
Testimony of Harold C. Strotz, Bankrupt:

Vol. I, p. 71 and 72. I have no books and records. Before I left Chicago, I destroyed all my check books.

Vol. I, p. 112. I do not have the cancelled checks on the bank account at the Security-First National Bank which I carried in the name of F. J. Ward. Every month I destroyed them. I never kept any books. I never had the checks after the month.

Vol. I, p. 116. "I have no cancelled checks. I destroy them each month. I have no records."

Objection II A. B.

Concealment of Assets by Virtue of Maintaining Bank Account in Name of F. J. Ward

Testimony of Harold C. Strotz, Bankrupt:

Vol. I, p. 30. I had a bank account in the Security-First National Bank of Los Angeles, Hollywood and

Cahuenga Branch. The account was in the name of F. J. Ward and checks were signed by myself for Mr. Ward. [190]

Vol. I, p. 39. This account was closed in August or September of 1940.

Vol. I, p. 94. "The reason for that was that I was continually harassed by sheriff's orders or something like that, and I was just afraid to try and do anything."

Vol. I, p. 98. "Yes, when did they start harassing you so you could not do business?" A. I consider they have been doing it ever since 1930."

Vol. I, p. 107-108. "Q. You had an account in the name of F. J. Ward? A. That is right. Q. At the Security-First National Bank in Hollywood? A. Hollywood and Cahuenga. Q. What did you use that account for, the account in the name of F. J. Ward? A. I used it as a banking account. Q. To pay your personal expenses and things of that kind? A. Yes. Q. To pay your department store accounts? A. Yes. Q. When did you open the account in the name of F. J. Ward? A. The bank has the record— Q. I want your recollection? A. I think I opened it in the fall of 1938. The Referee: What was the purpose of carrying the account in the name of F. J. Ward? A. Because I was having a lot of trouble at the time with my former wife

and I had had my bank account attached prior to that, so I carried it in his name."

Testimony of F. J. Ward:

Vol. I, p. 181. "Q. And you knew that he had told you the reason he wanted that account opened in your name was that he could not keep any money in his own name without it being attached by creditors? A. Well, he said that he thought that there were,—there was a possibility of certain moneys of his being attached and he asked me if I would object to having that account and I said no. I put in the account myself, I established the account. He did not."

Testimony of Harold C. Strotz, Bankrupt:

Vol. II, p. 17. On or about December, 1939, I had an average [191] balance in my bank account in the name of F. J. Ward, in excess of $1,000.00. The account of the bankrupt in the name of F. J. Ward, commencing December 13, 1938, up to the date of the closing of the account on August 30, 1940, consisting of four ledger sheets and two signature cards was offered in evidence as trustee's Exhibit No. 2.

[TRUSTEE'S EXHIBIT No. 2]

WARD, F. J.
Harold Strotz has P/A

No. commercial
Dec. 7, 1938

TO SIGN AND ENDORSE—LIMITED

Security-First National Bank of Los Angeles:

I/we hereby authorize Harold Strotz, whose signature appears below, for and on my/our behalf and in my/our name(s) to execute checks and other items for funds now on deposit or which may hereafter be deposited in my/our Commercial Account No.....with your Bank, and to endorse checks and other items payable to me (us or either of us) for deposit in said account and hereby ratifies all his/her acts in my/our behalf with you in connection with said account.

F. J. Ward
By Harold Strotz
Signature as Agent Will Sign

F. J. Ward
.....
Signature of Principal

FJW
.....
Signature of Principal

WHEN ACCOUNT IS IN TWO OR MORE INDIVIDUAL NAMES, ALL MUST SIGN

WARD, F. J.

No Commercial

I hereby agree to the conditions printed in the Bank Book issued in connection with this Account by the Security-First National Bank of Los Angeles.

Sign Here F. J. Ward
9243 Doheney Rd L A

Mr.
Mrs.
Miss

SIGNATURE VERIFIED

Residence Address ~~Carmel, Cal. Box 953~~ Tel. Carmel 25
City

Business Address 1118 Tower Rd Beverly Hills Tel.
City

Other A/Cs This Branch

Occupation
Former Bank Account or Reference Bank of Carmel—Carmel Calif.

Introduced By Harold Strotz Birth Place St. Paul, Minn.

Mother's Maiden Name First Deposit $480.00 Cash EC Acct. Opened By ..... Date .....

SIGNATURE CARD—INDIVIDUAL

Closing Date 8/30/40
Reason Going Away
A.B. 100—
A.M. 300— [67]

(Trustee's Exhibit No. 2)

HOLLYWOOD & CAHUENGA

NA
Sheet No. (1)

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F. J. WARD
HAROLD STROTZ HAS P.A.

Old Balance	Checks	Checks	Checks	Deposits	1938	New Balance
		Balance Brought Forward☞				
				480.00	Dec 13	480.00 *
480.00				1,000.00	Dec 15	1,480.00 *
1,480.00	100.00—				Dec 16	1,380.00 *
1,380.00	40.00—				Dec 20	1,340.00 *
1,340.00	30.22—	300.00—			Dec 22	1,009.78 *
1,009.78	10.00—				Dec 27	999.78 *
					Jan 1939	
999.78	100.00—				Jan 4	899.78 *
899.78	200.00—				Jan 9	699.78 *
699.78	5.92—	3.51—	41.62—			
	12.73—	27.83—			Jan 14	608.17 *
608.17		50.00—			Feb 23	558.17 *
558.17	55.37—	66.02—			Feb 27	436.78 *
436.78	100.00—				Feb 28	336.78 *
336.78	50.00—	50.00—	50.00—		Mar 1	186.78 *
186.78	75.00—				Mar 1	111.78 *
111.78	40.00—			√689.34	Mar 11	761.12 *
761.12	40.00—				Mar 14	721.12 *
721.12	5.22—	17.48—	27.09—			
	35.73—				Mar 15	635.60 *
635.60	18.25 Lst				Mar 15	617.35 *
617.35	25.00—	25.00—		146.69	Mar 23	714.04 *
714.04	16.88—	4.29—			Mar 28	692.87 *
692.87	6.02—				Mar 29	686.85 *
686.85	25.00—				Apr 1	661.85 *
661.85	20.00—			√600.00	Apr 1	1,241.85 *
1,241.85	500.00—				Apr 3	741.85 *
741.85				35.79	Apr 3	
				18.25	Apr 3	795.89 *
795.89	27.51—	100.00—			Apr 4	668.38 *
668.38	18.25 Lst			50.00	Apr 4	700.13 *
700.13	10.30—				Apr 6	689.83 *
689.83	40.00—				Apr 7	649.83 *

Balance Forward

[68]

(Trustee's Exhibit No. 2)

HOLLYWOOD & CAHUENGA

(2)

Sheet No.

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD HAROLD STROTZ HAS P/A

Old Balance	Checks	Checks	Checks	Deposits	1939	New Balance
		Balance Brought Forward☞				
649.83	6.00—				Apr 10	643.83 *
643.83	25.00—			258.26	Apr 12	877.09 *
877.09	18.00—	23.00—			Apr 15	836.09 *
836.09	157.50—	22.00—	15.00—		Apr 17 '39	641.59 *
641.59	25.00—				Apr 17 '39	616.59 *
616.59	500.00—	43.30			Apr 19 '39	73.29 *
73.29	19.00—				Apr 21 '39	54.29 *
54.29	20.00—			92.66	Apr 21 '39	126.95 *
126.95	20.00—				Apr 24 '39	106.95 *
106.95				98.68	Apr 24 '39	205.63 *
205.63	50.00—			89.07	Apr 27 '39	244.70 *
244.70	70.00—				Apr 28 '39	174.70 *
174.70	12.92 Lst				Apr 28 '39	161.78 *
161.78	17.39—				Apr 29 '39	144.39 *
144.39				12.92	May 2 '39	157.31 *
157.31	49.95—				May 3 '39	107.36 *
107.36	10.00—				May 5 '39	97.36 *
97.36	29.00—				May 8 '39	68.36 *
68.36	10.00—			50.00	May 8 '39	108.36 *
108.36				47.10	May 9 '39	155.46 *
155.46	10.48—	5.50—	3.25—		May 12 '39	136.23 *
136.23	56.98—				May 13 '39	79.25 *
79.25	35.00—			50.00	May 13 '39	94.25 *
94.25	18.00—				May 15 '39	76.25 *
76.25				145.74	May 24 '39	221.99 *
221.99				200.00	May 25 '39	421.99 *
421.99	26.00—				May 26 '39	395.99 *
395.99	41.19—				May 29 '39	354.80 *
354.80				35.00	May 29 '39	389.80 *
389.80	50.00—				May 31 '39	339.80 *
339.80	4.03—	10.28—	53.02—			
	6.34—				Jun 1 '39	266.13 *
266.13	55.85—				Jun 2 '39	210.28 *
210.28				250.00	Jun 2 '39	460.28 *
460.28	250.00—					210.28 *
210.28	.52 Lst				Jun '39	209.76 *
209.76				76.57	Jun 8 '39	286.33 *

Balance Forward

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(Trustee's Exhibit No. 2)

HOLLYWOOD & CAHUENGA

Sheet No. (3)

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD

Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
		Balance Brought Forward ☞				
286.33✓				200.00	Jun 10 '39	486.33 *
486.33	140.00—				Jun 12 '39	346.33 *
346.33	13.00—	40.00—			Jun 13 '39	293.33 *
293.33	20.00—				Jun 14 '39	273.33 *
273.33	30.00—				Jun 21 '39	243.33 *
243.33				300.00	Jun 29 '39	543.33 *
543.33	32.15—	30.50—			Jul 1 '39	480.68 *
480.68	30.00—				Jul 1 '39	450.68 *
450.68	35.00—				Jul 5 '39	415.68 *
415.68				✓659.70	Jul 5 '39	1,075.38 *
1,075.38	250.00—				Jul 6 '39	825.38 *
825.38	23.50—				Jul 7 '39	801.88 *
801.88	30.00—				Jul 10 '39	771.88 *
771.88	40.00—			355.00	Jul 10 '39	1,086.88 *
1,086.88	308.88—				Jul 13 '39	778.00 *
778.00	5.66—	97.08—	7.73—			
	4.55—				Jul 14 '39	662.98 *
662.98				✓500.00	Jul 17 '39	1,162.98 *
1,162.98	503.75—	20.00—		.52		
				✓1,500.00	Jul 18 '39	2,139.75 *
2,139.75	64.47—				Jul 19 '39	2,075.28 *
2,075.28	100.00—				Jul 24 '39	1,975.28 *
1,975.28	1,500.00—				Jul 26 '39	475.28 *
475.28	59.44—	25.00—	30.35—			
	75.95—				Jul 28 '39	284.54 *
284.54	4.94—	96.83—	4.38—			
	5.58—	40.00—			Jul 29 '39	132.81 *
132.81				174.40	Jul 31 '39	307.21 *
307.21	163.30—				Aug 7 '39	143.91 *
143.91	20.00—				Sep 23 '39	123.91 *
123.91	14.00—				Sep 27 '39	109.91 *
109.91	11.43—	35.76—	6.00—		Sep 29 '39	56.72 *
56.72	6.00—	15.00—			Oct 3 '39	35.72 *
35.72				105.15	Oct 4 '39	140.87 *
140.87	20.50—				Oct 5 '39	120.37 *

Balance Forward

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(Trustee's Exhibit No. 2)

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HOLLYWOOD & CAHUENGA

Sheet No.

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD

Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
		Balance Brought Forward☞				
120.37	30.00—				Oct 10 '39	90.37 *
90.37				√1,006.50	Oct 10 '39	1,096.87 *
1,096.87	.40 Lst				Oct 11 '39	1,096.47 *
1,096.47	150.00—				Oct 14 '39	946.47 *
946.47	62.35—	50.05—			Oct 16 '39	834.07 *
834.07	2.84—				Oct 17 '39	831.23 *
831.23	522.75—				Oct 17 '39	308.48 *
308.48				122.05	Oct 20 '39	430.53 *
430.53	100.00—	25.00—		113.29	Oct 28 '39	418.82 *
418.82	18.50—				Nov 13 '39	400.32 *
400.32	30.00—				Nov 14 '39	370.32 *
370.32	50.00—				Nov 16 '39	320.32 *
320.32				√323.90	Nov 16 '39	644.22 *
644.22	20.00—				Nov 20 '39	624.22 *
624.22	120.00—				Nov 24 '39	504.22 *
504.22	30.00—	28.60—			Nov 25 '39	445.62 *
445.62	100.00—				Nov 27 '39	345.62 *
345.62	22.00—				Nov 29 '39	323.62 *
323.62	47.97—	24.81—	39.14—		Nov 30 '39	211.70 *
211.70	113.10—	10.77—			Dec 1 '39	87.83 *
87.83	30.00—			187.17	Dec 8 '39	245.00 *
245.00				√400.00	Dec 12 '39	645.00 *
645.00	100.00—	40.00—			Dec 14 '39	505.00 *
505.00	200.00—				Dec 14 '39	305.00 *
305.00	66.55—				Dec 19 '39	238.45 *
238.45	50.00—				Dec 20 '39	188.45 *
188.45				√309.19	Dec 20 '39	497.64 *
497.64				40.00	Dec 22 '39	537.64 *
537.64	15.00—				Dec 22 '39	522.64 *
522.64	29.32—	11.00—			Dec 23 '39	482.32 *
482.32	29.48—				Dec 26 '39	452.84 *
452.84	90.00—			√700.00	Dec 26 '39	1,062.84 *
1,062.84	40.00—			√565.47	Dec 27 '39	1,588.31 *
1,588.31	35.28—				Dec 28 '39	1,553.03 *
1,553.03	191.11—				Dec 29 '39	1,361.92 *
1,361.92	52.50—				Dec 29 '39	1,309.42 *
1,309.42	26.16—	86.43—			Dec 30 '39	1,196.83 *

Balance Forward

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(Trustee's Exhibit No. 2)

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HOLLYWOOD & CAHUENGA

Sheet No.

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD

Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
			Balance Brought Forward☞			
1,196.83√	40.00—				Jan 2 '40	1,156.83 *
1,156.83	16.28—	250.00—			Jan 3 '40	890.55 *
890.55				300.00	Jan 3 '40	1,190.55 *
1,190.55	25.00—				Jan 6 '40	1,165.55 *
1,165.55	20.00—			150.00	Jan 8 '40	1,295.55 *
1,295.55	100.00—				Jan 11 '40	1,195.55 *
1,195.55	1.00 Lst	300.00—		107.70	Jan 11 '40	1,002.25 *
1,002.25				√900.00	Jan 12 '40	1,902.25 *
1,902.25	38.83—	17.00—			Jan 13 '40	1,846.42 *
1,846.42	46.84—	5.13—	7.18—			
	150.00—	100.00—			Jan 15 '40	1,537.27 *
1,537.27	400.00—				Jan 15 '40	1,137.27 *
1,137.27	65.16—	30.00—			Jan 16 '40	1,042.11 *
1,042.11	308.88—	11.25—			Jan 16 '40	721.98 *
721.98	3.90—	125.00—			Jan 17 '40	593.08 *
593.08	25.00—				Jan 18 '40	568.08 *
568.08	33.27—				Jan 19 '40	534.81 *
534.81				165.00	Jan 19 '40	699.81 *
699.81	29.00—				Jan 20 '40	670.81 *
670.81	201.50—				Jan 20 '40	469.31 *
469.31	125.00—				Jan 23 '40	344.31 *
344.31	50.00—				Feb 2	294.31 *
294.31	109.56—			89.99	Feb 14 '40	274.74 *
274.74	32.21—				Feb 20 '40	242.53 *
242.53				165.00	Feb 23 '40	407.53 *
407.53	25.00—				Feb 24 '40	382.53 *
382.53	25.00—				Feb 26 '40	357.53 *
357.53				300.00	Feb 29	657.53 *
657.53				√3,000.00	Mar 2	3,657.53 *
3,657.53	166.52—					
	100.00—				Mar 4	3,391.01 *
3,391.01	15.00—				Mar 6 '40	3,376.01 *
3,376.01	60.00—				Mar 7 '40	3,316.01 *
3,316.01	2,000.00—				Mar 10 '40	1,316.01 *
1,316.01	164.00—				Mar 11 '40	1,152.01 *
1,152.01	1,000.00—				Mar 13 '40	152.01 *

Balance Forward

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(Trustee's Exhibit No. 2)

(6)

Sheet No.

HOLLYWOOD & CAHUENGA

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD

Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
		Balance Brought Forward☞				
152.01				100.00	Mar 21 '40	252.01 *
252.01	2.83—				Mar 23 '40	249.18 *
249.18	27.65—				Mar 28 '40	221.53 *
221.53	7.50—				Apr 2 '40	214.03 *
214.03	40.00—			134.62	Apr 12 '40	308.65 *
308.65	100.00—				Apr 15 '40	208.65 *
208.65				√2,320.00	Apr 15 '40	2,528.65 *
2,528.65	139.08—	22.00—			Apr 17 '40	2,367.57 *
2,367.57	50.00—				Apr 19 '40	2,317.57 *
2,317.57	750.00—				Apr 22 '40	1,567.57 *
1,567.57	25.00—			300.00	Apr 23 '40	1,842.57 *
1,842.57	150.00—	25.00—	26.90—		Apr 24 '40	1,640.67 *
1,640.67	45.99—	31.00—			Apr 25 '40	1,563.68 *
1,563.68				40.60	Apr 26 '40	1,604.28 *
1,604.28	50.00—				Apr 29	1,554.28 *
1,554.28	26.07—	60.00—	27.56—		Apr 30 '40	1,440.65 *
1,440.65	51.13—	32.50—			May 2 '40	1,357.02 *
1,357.02	5.82—	4.43—			May 3 '40	1,346.77 *
1,346.77	116.00—				May 4 '40	1,230.77 *
1,230.77	35.00—				May 8 '40	1,195.77 *
1,195.77	15.00—			182.78	May 8 '40	1,363.55 *
1,363.55	80.00—				May 10 '40	1,283.55 *
1,283.55	58.52—	9.38—			May 13 '40	1,215.65 *
1,215.65	23.91—	57.15—	39.68—		May 14 '40	1,094.91 *
1,094.91	20.00—			√500.00	May 14 '40	1,574.91 *
1,574.91	500.00—	40.83—			May 15 '40	1,034.08 *
1,034.08	21.50—				May 17 '40	1,012.58 *
1,012.58	10.00—	25.00—			May 21 '40	977.58 *
977.58	30.00—				May 21 '40	947.58 *
947.58	500.00—				May 23 '40	447.58 *
447.58	40.00—	27.00—	135.00—			
	90.00—				May 27 '40	155.58 *
					Balance Forward	

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(Trustee's Exhibit No. 2)

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HOLLYWOOD & CAHUENGA

Sheet No.

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD

Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
		Balance Brought Forward ☞				
155.58✓	52.04—				Jun 1 '40	103.54 *
103.54	30.00—				Jun 7 '40	73.54 *
73.54	10.00—				Jun 11	63.54 *
63.54	25.00—				Jun 12 '40	38.54 *
38.54	6.91—				Jun 21 '40	31.63 *
31.63	7.99—				Jun 22 '40	23.64 *
23.64				400.00		
				150.00	Jun 24 '40	573.64 *
573.64	3.90—	48.50—			Jun 26 '40	521.24 *
521.24	17.06—				Jun 28 '40	504.18 *
504.18	(29.80)—				Jul 1 '40	474.38 *
474.38	29.87—			(29.80)	Jul 1 '40	474.31 *
474.31				523.00	Jul 2 '40	997.31 *
997.31	170.99—	42.00—	42.00—		Jul 5 '40	742.32 *
742.32	25.00—	30.00—	57.14—		Jul 8 '40	630.18 *
630.18	308.88—			500.00	Jul 8 '40	821.30 *
821.30	36.00—				Jul 9 '40	785.30 *
785.30	20.30—	42.00—			Jul 9 '40	723.00 *
723.00	135.00—	.64 Lst	41		Jul 11 '40	587.36 *
587.36	11.94—				Jun 12 '40	575.42 *
575.42	25.00—				Jun 13 '40	550.42 *
550.42	10.74—				Jul 15 '40	539.68 *
539.68	20.00—	15.00—	40.00—		Jul 16 '40	464.68 *
464.68	30.00—				Jul 16 '40	434.68 *
434.68	58.52—	3.48—			Jul 17 '40	372.68 *
372.68				150.00	Jul 17 '40	522.68 *
522.68	30.00—			100.00	Jul 18 '40	592.68 *
592.68	6.91—				Jul 19 '40	585.77 *
585.77	123.00—	50.00—		✓700.00	Jul 19 '40	1,110.77 *
1,110.77	29.95—	9.45—	373.00—		Jul 23 '40	698.37 *
698.37	13.00—	4.40—	34.40—			
	107.54	46.05—			Jul 24 '40	492.98 *
492.98	135.00—				Jul 25 '40	357.98 *
357.98	17.69—				Jul 27 '40	340.29 *
340.29				200.00	Jul 29 '40	540.29 *
540.29	.84 Lst				Aug 9 '40	539.45 *

Balance Forward

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(Trustee's Exhibit No. 2)

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HOLLYWOOD & CAHUENGA

Sheet No.

Ledger Sheet

Commercial Account

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES

F J WARD
Harold Strotz has P/A

Old Balance	Checks	Checks	Checks	Deposits		New Balance
		Balance Brought Forward☞				
539.45	29.61—	2.65—	4.08—		Aug 15 '40	503.11 *
503.11	100.00—				Aug 17 '40	403.11 *
403.11	44.17—				Aug 19 '40	358.94 *
358.94	100.00—			300.00	Aug 20 '40	558.94 *
558.94	10.00—				Aug 21 '40	548.94 *
548.94	11.32—	14.07—			Aug 22 '40	523.55 *
523.55	46.98—				Aug 23 '40	476.57 *
476.57	25.00—				Aug 24 '40	451.57 *
451.57	1,464.06—	29.00—		√2,493.06	Aug 24 '40	1,451.57 *
1,451.57	750.00—				Aug 26 '40	701.57 *
701.57	25.00—				Aug 28 '40	676.57 *
676.57	10.00—	34.00—			Aug 29 '40	632.57 *
632.57	250.00—				Aug 29 '40	382.57 *
382.57	150.00—				Aug 30 '40	232.57 *
232.57	132.57—				Aug 30 '40	100.00 *
100.00	100.00—				Aug 30 '40	.00 *

[Endorsed]: No. 37302-M. Harold C. Strotz, Bankrupt. Trustee vs. F. J. Ward. Trustee's Exhibit No. 2. Filed April 3, 1941. Ernest R. Utley, Referee, by L. R.

[Endorsed]: Filed Dec. 30, 1942. [75]

Vol. II, p. 23. On or about September 6, 1939, I was served with a summons and complaint in an action filed in the Superior Court of Los Angeles County, No. 444,462, entitled Martin T. O'Brien as receiver of the Reliance Bank and Trust Company, plaintiff, versus Harold C. Strotz, defendant.

Vol. II, p. 24. Mr. Garbus acted as my attorney in that matter.

Vol. II, p. 27-28. "Mr. Dechter: I intend to show this witness even while restrained by a Court order from transferring his assets made an affidavit that he did not have this particular bank account, and after the injunction was made transferred this F. J. Ward bank account to someone else by closing it out. In other words, we have showed the fact he opened the bank account in F. J. Ward's name for the purpose of putting it beyond the reach of certain creditors, and we intend to show that bank account concealment continued; that when he was served with the restraining order he filed an affidavit he had not such account and after the restraining order was served on him he went ahead and transferred the bank account that was in the name of F. J. Ward."

Vol. II, p. 33. Statement by Mr. Garbus the F. J. Ward bank account was closed on August 30, 1940, and this restraining order was issued September 23, 1940.

Vol. II, p. 39-40. "Mr. Dechter: I next wish to call the Court's attention from the file which has been received in evidence to the order to show cause why an injunction pendente lite restraining the defendant from conveying or encumbering property should not issue, and the temporary restraining order issued on August 21,

1940, by [192] the Honorable Judge Wilson of the Superior Court, which was returnable on August 30, 1940, and which provides that pending the hearing of said order to show cause— Mr. Garbus: It does not prove he cannot close the bank account. Mr. Dechter: —he is restrained from issuing, releasing, transferring, withdrawing, leasing or mortgaging, pledging or hypothecating or creating any lien of any kind whatsoever upon that certain interest owned by the said Harold C. Strotz in the estate of Anne Gould Strotz, deceased, and any and all moneys, credits, debts or other things of value owned by or in the possession or under the control of the Cahuenga and Hollywood Branch of the Security-First National Bank of said Harold C. Strotz.

"Also the affidavit to support said order to show cause of William J. Currer, Junior, which affidavit states that the affiant has been informed and that the bankrupt, the defendant in said action, has an account in the Cahuenga and Hollywood Branch of the Security-First National Bank.

"I also wish to call the Court's attention to the affidavit of Harold C. Strotz filed in opposition to said order to show cause in the Superior Court action on September 6, 1940, acknowledged on September 3, 1940, and which states among other things:

> "That he has no account in the Cahuenga and Hollywood Branch of the Security-First National Bank of Los Angeles and did not have such account at the time of the service upon him of the order to show cause, save that the estate of Anne Gould, deceased, has an account in said bank in which there is the sum of approximately $500 as aforesaid."

Statement by Mr. Dechter the bank account of the bankrupt in the name of F. J. Ward, trustee's Exhibit No. 2 shows that on August [193] 28, 1940, there was a balance in that account of $676.57.

Objection II I. and J.

Concealment of $11,500 Inherited From Estate of Anne Gould Strotz, Deceased.

Testimony of Bankrupt:

Vol. I, p. 36. My wife committed suicide on September 13, 1938. I was executor of her estate and as such, from the latter part of 1939 until March, 1940, I received approximately $18,000.00.

Vol. I, p. 140. I received the first of this money in 1939, and the last of it in February, 1940. With this money, I went to Honolulu and to New York and to Chicago, and I tried to make arrangements to settle my other accounts.

Vol. I, p. 141. Most of this money I kept in cash. I may have deposited one or two thousand dollars in the account I had in the name of F. J. Ward. When I say I kept it in cash I mean cashier's checks drawn on the Security-First National Bank, I received the money at different times. I used some of it for living expenses and some for trips.

Vol. I, p. 304-305. "Mr. Dechter: Q. Mr. Strotz, I will show you a letter written by your counsel, Simon and Garbus, to William J. Currer dated October 23, 1939 in re Martin T. O'Brien, and so forth, versus Harold C. Strotz.

"Dear Mr. Currer:

This is to confirm our understanding that the defendant in the above-entitled action need not answer the complaint on file herein or otherwise plead in said action until you give to this office notice requesting him so to do. We understand that in the meantime you will advise this office as to the attitude of your client in extending the prosecution of this [194] action to preparations for settlement of this matter.

Yours very truly,

SIMON AND GARBUS

By Morton Garbus"

Does that refresh your memory you withdrew this $11,500 after this action was pending against you? Mr. Garbus: What is the date of that letter? A. October 23, 1939. Mr. Garbus: That is nearly six months, isn't it? Mr. Dechter: Will you read the question? (The reporter read the pending question.) A. Well, of course I withdrew it afterwards, if that is the date of the letter."

Vol. I, p. 308-309. Mr. Dechter: Q. Mr. Strotz, I will show you the ledger sheet of the Security-First National Bank, Hollywood and Cahuenga Branch, which shows that you made the following deposits to the account of the estate of *Ann* G. Strotz:

October 29, 1938, $1,562;

November 28, 1938, $447.77;

April 21, 1939, $3,000.00;

June 13, 1939, $15,000.00

The witness calls my attention to the fact I missed a dollar deposit on May 5. 1939.

June 29, 1939, $5,000.00;
November 9, 1939, $5.87;
December 14, 1939, $300.00;
February 26, 1940, $16,948.12;

or a total of approximately a sum in excess of $40,000.00 between those dates.

"Mr. Garbus furnished me with a copy of the report and petition for final distribution which has filled in in pencil—withdraw that—which originally had as prepared, on the blank day of blank, 1938,

"Your petitioner caused to be made and returned to this [195] court a true inventory and appraisement of all the estate of said deceased which had come in his possession or knowledge as of that date was assets in a total sum of $48,713.20," and then filled in it is the 12th day of March, 1938, which is stricken and 1940 written in.

"Now, can you tell me why between the 25th of October, 1938 and the 12th day of March, 1940 no inventory and appraisement had been filed by you although you had received and cashed before that time a sum in excess of $40,000.00? A. Well, yes, I can tell you one of the reasons for it."

Vol I, p. 310-311. "A. Well, you see originally—it is a rather peculiar situation. Originally my wife's estate was to receive a very much smaller sum, but I had studied the trust very carefully and I discussed with Mr. Jay Gould's fiscal guardian for New Jersey, or financial

guardian, the point that this trust fund had unquestionably bought mortgages that were not legal for a trust, which was based,—this trust was formed in 1922, and it was based on the fact that only securities legal under the New York trust laws could be purchased. The result was that I never knew until early sometime in 1940 just exactly how much money my wife's estate would receive because the Commercial Trust Company of New Jersey finally made a settlement in which they took back a great number of these mortgages. They agreed to pay a certain percentage of interest for the years that no interest had been paid, and the result was that my stepson, his sister's estate received a large increase in principal over what they expected, a large increase in income, and because of the fact my wife had an interest, a life interest her estate received additional money: Mr. Dechter: Q. All right. Now, on June 13, 1939 the bank account shows that you had received up to that time a sum in excess of $20,000.00. Are you able to explain why no inventory and appraisal was filed showing that amount until March of 1940? A. I never knew I was supposed to [196] file one."

Vol. I, p. 313. "Q. On March 2, 1940 I asked you about a deposit to your bank account in the name of F. J. Ward of $3,000.00. You said that came from the estate of your wife. Is that correct? A. Yes, but it does not come from a check from the estate. It was money I had withdrawn prior to that."

Vol. II, p. 45-46. I issued a check on the Hollywood and Cahuenga Branch of the Security-First National Bank of Los Angeles to the estate of Anne Gould Strotz by Harold C. Strotz, executor, for $11,500.00, payable

to the order of myself. I took this check and received in return for the same cashier's checks aggregating the sum of $11,500.00.

Vol. II, p. 49. I took this money out to pay certain bills, and I drew it out because I will admit I was afraid my bank account might be attached in some form or other.

Vol. II, p. 50. At the time I drew this money from the estate account, I kept it in cashier's checks. I had this checking account in the name of F. J. Ward.

Vol. II, p. 51. I have been insolvent since December, 1929.

Vol. II, p. 95. Witness shown check dated October 20, 1939, drawn on the estate of Anne G. Strotz account for $1,000.00 and testified (p. 96) that it was drawn without a court order. The check was made payable to Harold Strotz.

Vol. II, p. 97. I don't know what I did with that particular money.

Vol. II, p. 98. Bankrupt shown check of estate dated July 1, 1939, payable to bankrupt in the sum of $4,000.00.

Vol. II, p. 99. I did not have a court order from the probate court of Los Angeles County authorizing that withdrawal. I believe I took $2,000.00 of this money with me to Honolulu. I have no record of what I did with it. This withdrawal of $4,000.00 on July 1, 1939, was made after I deposited $5,000.00 in the account of the estate of Anne Gould. [197]

Vol. II, p. 102. I was the residuary beneficiary of the estate and withdrew funds from the estate account from

time to time and used those funds for my personal benefit.

Vol. II, p. 103. The estate of Anne Gould was opened in October, 1938, and no inventory was filed until March 12, 1940.

Vol. II, p. 113-114-115-116. Bankrupt shown check (trustee's Exhibit No. 6) for $11,500.00 drawn on the estate account of Anne G. Strotz payable to bankrupt and bankrupt testified that in exchange for this check he received the following cashier's checks, dated February 26, 1940: Check No. 777,205 for $3,600.00 payable to Harold C. Strotz. Check No. 777,207 for $1,500.00 payable to Harold C. Strotz. Check No. 777,204 payable to Sidney M. Strotz, brother of bankrupt, for $3,000.00. Check No. 777,201, payable to Bekins Van & Storage Company for $600.00. Check No. 777,202 payable to Guy M. Peters for $500.00. Check No. 777,203 payable to Hamilton Vose, Junior, for $500.00 These checks total $9,700.00. I don't remember whether I received the balance of the $11,500.00 in cash. The check No. 777,205 for $3,600.00 was cashed by me March 1, 1940.

Vol. II, p. 116. With reference to the check made out to my brother, Sidney M. Strotz, for $3,000.00, within a week after the check was issued, I received in return for that check the personal check of my brother for $3,000.00 drawn on the First National Bank of Chicago.

Vol. II, p. 117. When the personal check for $3,000.00 was received back from my brother, I deposited it in the bank account I had in the name of F. J. Ward. When I received this personal check of my brother's for $3,000.00 he said he would not accept it as I needed it more than he did. I sailed for Honolulu July 27, 1939, and returned September 13, 1939. [198]

Evidence re Interest in Trust Estate Created by Father's Will

Testimony of Bankrupt:

Vol. I, p. 17. My understanding of my father's will is that at the time of my mother's death, I then have an interest in one-half of one-third of the estate, and five years later I have an interest in another one-half of one-third. The First National Bank of Chicago is the trustee under the trust created by this will. Under its terms my mother receives the income from the corpus of the estate during her lifetime. The other beneficiaries under the trust are my brother and my sister. At the time of my father's death, the value of his estate was in excess of $1,000,000.00.

Vol. I, p. 18. It is still in the neighborhood of $1,000,000.00. My mother lives here in Los Angeles part of the time. Her sole income is the income from this trust estate. Her annual income from this trust estate is over $30,000.00. I don't know the exact amount.

Statements of Referee Utley

Vol. II, p. 156. "The Referee: I will tell you frankly the testimony thus far that impresses me in this matter, and the only testimony that impresses me is the fact these men were very close friends, lived together in the one house, that Mr. Ward did permit Mr. Strotz to use his name to carry a bank account in, and that it was being done for the purpose of keeping funds away from Mr. Strotz's creditors, backed by the further fact that Mr. Ward knew Mr. Strotz was in financial difficulty and the fact they carried on these transactions, together with the close relationship shown by the transactions in the

oil venture—referring to the two covered by Respondent's Exhibits A and B, and shown by some of the contracts relating to the same transaction."

Vol. II, p. 164. "The Referee: The testimony shows here that Mr. Strotz wanted to do something to prevent creditors from reaching his money, and Mr. Ward in 1938 was perfectly willing to go along [199] with him and cooperate with him in that manner, and the Court can take that into consideration in determining whether or not he was willing to assist Mr. Strotz in protecting himself in some other matters. While you can argue the matter, I am afraid you cannot make any impression on the Court on that point."

Vol. II, p. 165. "The Referee: That may be the testimony but the view of the Court from the testimony I have heard is I am impressed with this, that Mr. Strotz was not worried about his wife attaching him one-half as much as he was about someone else attaching. Mr. Garbus: There wasn't another single solitary creditor mentioned at the time, or evidence that another creditor existed at that time. The Referee: The Court cannot accept that viewpoint."

Vol. II, p. 166. "The Referee: If Mr. Strotz had had the protection of his creditors in mind he would have had some of that $11,500.00 he got from his wife's estate to have gone toward the payment of some of them."

Vol. II, p. 169-172. "The Referee: Well, Mr. Strotz testified here, and he has been very frank about it, in substance that he put this money where it could not be attached. Mr. Garbus: Which money is that? The Referee: Put it in Mr. Ward's bank account. Mr. Garbus: There wasn't any money then—just a few hundred

dollars. The Referee: Any other construction of his testimony in that regard would certainly be a very, very strange construction."

"Mr. Garbus: Yes, but this reflects upon the bankrupt, and you know very well if it is to be brought in on the charge of fraud on the part of the bankrupt I will resist it to the last, and every attorney should. Your Honor, Mr. Strotz testified he opened this bank account solely for the purpose of giving him the opportunity not to be harassed by attachments. That is true. He made the general statement but he had in his mind his ex-wife, but that is not a wrong as far as his creditors— The Referee: Let us see whether or not it is. If he did put this money in the bank so he [200] could have paid creditors and had used it for that purpose then there might be something to your argument, but where he carries the bank account and uses it for every other conceivable purpose other than that I think a different inference has to be drawn from it. Mr. Garbus: Your Honor, would your Honor say then that the law is a man who is in debt must wear his heart on his sleeve, as far as his creditors are concerned? That is not the law. The law is a man in debt has a right to prefer one creditor over another, he has the right to invest his money in a speculation, he has a right to buy things he needs, an automobile and clothing— The Referee: If there has been any kind of preferring one creditor over another I have not seen it because I have not seen any evidence where any creditor got money, so there is no preferring one creditor over another. They have been all very much in the same class, they have not gotten anything, as far as the testimony is concerned."

Vol. II, p. 171-172. "Mr. Garbus: The next point I want to make is with reference to the claims this witness testified that he knew about. There were two actions filed in California which preceded this bankruptcy proceeding, and those actions were filed after the transactions here mentioned, as far as I remember them.

"This is what happened: The fact is this man was eventually going to be sued in California where his local property could be reached by attachment.

"Now, with reference to the need of money your Honor permits evidence of his withdrawals from an estate to prove at the time he entered into this transaction for $500.00 he probably didn't need it. He withdrew the money from the estate, your Honor, long after this transaction, so how could that possibly be material? He withdrew the money from the estate in 1940 and these transactions took place in 1939. Why is that admissible? Do you assume a man does not need money merely because he has ten thousand dollars? That is no proof he does not need more when he owes two million. [201] The Referee: That argument is silly, when he owes two million and when the evidence itself discloses he did not pay one cent to creditors."

Exhibits

Trustee's Exhibit 2 is a statement of the bank account of the bankrupt in the name of F. J. Ward at the Security-First National Bank of Los Angeles. This shows the various deposits and withdrawals made by Strotz in this bank account for a period of two years before the bankruptcy. This exhibit has been transmitted by Referee Utley to this Court. [202]

Letter to Referee to Counsel for Reconstruction Finance Corporation Filed by Leave of Court February 8, 1943

"United States District Court
Southern District of California
Central Division
Ernest R. Utley
Referee in Bankruptcy
327 Federal Building
Temple & Spring Streets
Los Angeles, Calif.
December 2, 1942

Frank Michels, Esq.
Bullinger, Michels & Dicus
134 S. La Salle Street
Chicago

Re: Harold C. Strotz, bankrupt

Dear Mr. Michels:

I am in receipt of your letter of November 30th, enclosing a copy of the decision of the Ninth Circuit in the case of Averill v. Quittner, for which I thank you.

This is to advise you that I signed the Findings of Fact, Conclusions of Law and Order this morning, confirming the plan of arrangement in the above entitled case.

From a strictly technical point of view, upon the cold question of whether or not the bankrupt would be entitled to a discharge independent of the plan of arrangement offered, I think your contention would be correct. However, I cannot bring myself to the point, under the facts in this case, of saying that the bankrupt is not entitled to a discharge when it would mean, in effect, that I would

literally pitch into the fire $32,000.00, which all creditors except the Reconstruction Finance Corporation, have expressed a desire to have and [203] which they would not get if his discharge were denied. I feel that such an order would be of greater punishment to the creditors than to the bankrupt and would be a far greater detriment to them. Possibly this position forces me to require stricter proof upon the question of discharge in so far as the objector is concerned, than I would otherwise require but if creditors are to be denied the right to the funds in question, under the circumstances of the case, I much prefer that a higher court makes such an order. In arriving at this conclusion, I am not overlooking the fact that some day the bankrupt may come into possession of some funds through his father's estate but in this connection, I must remember that he gave an assignment of this interest to a creditor years ago and any other creditor in the estate, to participate in such funds, would certainly have an uphill fight through long drawn out and expensive litigation to ever acquire an interest therein.

Yours very truly,

Ernest R. Utley
Referee in Bankruptcy"

Respectfully submitted,

FRANK MICHELS and
JACOB J. LIEBERMAN,
Attorneys for Reconstruction Finance Corporation. [204]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Mar. 27, 1944. [205]

[Title of Court and Cause.]

REPLY BRIEF OF BANKRUPT IN SUPPORT OF HIS DISCHARGE AND PLAN OF ARRANGEMENT

There remains pending in this proceeding the question as to whether the bankrupt is entitled to his discharge upon the confirmation of a plan submitted by him under Section 321 of Chapter XI of the Bankruptcy Act.

The only creditor objecting to the bankrupt's discharge and the confirmation of his plan of arrangement is the Reconstruction Finance Corporation who bases its objections upon two alleged grounds:

I. That the bankrupt failed to keep books of accounts or records from which his financial condition and business transactions might be ascertained, and

II. That the bankrupt concealed or permitted to be concealed his property with intent to hinder, delay or defraud his creditors.

This brief is supported by excerpts from the transcript of the testimony of the bankrupt and other witnesses in the bankruptcy proceedings and will therefore be confined to these two objections. [206]

I.

Keeping of Books and Records

The Referee made a finding that "the bankrupt for many years prior to the filing of his petition in bankruptcy was not engaged in any particular line of business and that the transactions carried on by him were not such as would require the keeping of a set of books or

records." This finding of the Referee is supported by the evidence as follows:

When the bankrupt was actually engaged in business in connection with which his heavy indebtedness in the sum of over $1,000,000.00 was incurred, books and records were kept by the companies which carried on the business of the bankrupt. Those companies were

(a) Keech & Company, a brokerage firm in Chicago, Illinois, and

(b) The Chicago Stadium, Chicago, Illinois.

The testimony is uncontradicted in this connection that these companies kept books and records.

Transcript Vol. 1, page 99, line 25 and following.

It will be remembered that all of the debts incurred by the bankrupt, including the debt owing to the Reconstruction Finance Corporation, the objecting creditor, arose during and as a result of the stock market crash of 1929 and 1930 and the accompanying bank failures at that time. Subsequent to the 1929 and 1930 depression years the bankrupt was not engaged in any substantial business by reason of his heavy indebtedness and therefore there was no occasion for him to keep books of account or records. Such transactions as were carried on by the bankrupt were reflected by his bank accounts, records of which were available and were introduced in evidence in this bankruptcy proceeding.

The Referee further found that the bankrupt did not mutilate, falsify or conceal any of his books of account or records.

Findings of Fact No. 9. [207]

The evidence showed that the bankrupt filed income tax returns during each year that he had received income and that the income taxes were paid by the bankrupt pursuant to the income tax returns.

Transcript Vol. 1, page 99, line 16 and following.

The bankrupt testified that up to the date of the hearing in the bankruptcy proceedings he had in his possession the cancelled checks of a small oil company in which he was interested.

Transcript Vol. 1, page 144, line 20.

Furthermore, the Referee expressly found that whereas it is true that certain of the cancelled checks of the bankrupt were not retained by him and were destroyed in the usual course of events, such act on the bankrupt's part was without any intent to hinder, delay or defraud creditors.

Findings of Fact No. 10.

II.

There Was No Concealment by the Bankrupt of His Property.

A. The F. J. Ward Bank Account.

The finding made by the Referee in this matter to the effect that the bankrupt did not conceal any of his property for the purpose of hindering, delaying or defrauding his creditors is substantially supported by the evidence even though there may be a conflict in that regard.

Findings of Fact No. 11.

The objecting creditor makes an issue of the fact that the bankrupt caused to be opened and maintained a bank

account in the name of F. J. Ward at the Security First National Bank of Los Angeles, and that this was done by the bankrupt with the intent to hinder, delay or defraud his creditors. The Referee, having all of the facts in the case before him in this connection, made a finding that there was but a small sum of money on deposit in this account within twelve months prior to the commencement of the bankruptcy proceeding and that this bank account was not maintained by the bankrupt for the [208] purpose of hindering, or delaying or defrauding his creditors, or putting his property beyond the reach of creditors.

Findings of Fact No. 12.

The above finding of fact is clearly supported by the evidence. The evidence shows that the bankrupt was harassed not by his general creditors or any creditor interested in this bankruptcy proceeding, but solely by his ex-wife, who threatened to attach any moneys which she could find on deposit in any bank account in the name of the bankrupt. His purpose of avoiding the tactics of his ex-wife is clearly commendable in this regard, in that he was at all times endeavoring to rehabilitate himself so that, perchance, he could carry out a plan whereby he might settle with his creditors since it was impossible for him to pay them off in full on his total indebtedness of approximately $1,881,830.86. There was no evidence that the bankrupt opened the F. J. Ward bank account in order to delay, defraud or hinder any of his creditors. F. J. Ward was in truth and in fact an actual living person who was engaged in business with the bankrupt. This Mr. Ward testified that the purpose of opening the bank account was to have a place where

money could be deposited in connection with any future oil deal that could not be attached by the bankrupt's wife.

Transcript of testimony of Francis John Ward, page 21, line 1.

This same person, F. J. Ward, testified that the bankrupt had told him, in connection with the opening of this bank account, that there would not be any judgments against the bankrupt in Los Angeles.

Same transcript, page 22, line 7.

The evidence further shows that the F. J. Ward bank account was maintained openly and for a legal and meritorious purpose. The records of the Security First National Bank indicated on their face [209] that the bankrupt had an interest in said F. J. Ward bank account. The existence of this bank account was frankly disclosed by the bankrupt at the time, and in connection with, the filing of his petition in bankruptcy. Furthermore, the testimony shows that the bankrupt used this F. J. Ward bank account to pay his personal expenses and to pay his department store accounts.

Transcript Vol. 1, page 107, line 19 and following:

At no time did the bankrupt make or furnish a statement to any bank, creditor or person in which he failed to disclose the existence of the F. J. Ward bank account. Many checks were deposited by the bankrupt to the F. J. Ward bank account and many withdrawals were made by him of moneys on deposit in said account to persons, firms and corporations throughout the State of California, all having knowledge of the fact that the bankrupt had an interest in said account.

Although there was on deposit in said bank account the $676.57 on August 28, 1940, there is no showing that this sum had not prior thereto been checked out. The bankrupt was not found to have been in contempt of Court by reason of the withdrawal of moneys from this bank account, nor was there any hearing in that regard. There is no evidence to support the contention that the bankrupt withdrew moneys from said bank account for the purpose of hindering, delaying or defrauding any of his creditors.

B. Assets From the Estate of Anne Gould Strotz, Deceased.

The bankrupt was the executor of the estate of his deceased wife, Anne Gould Strotz, acting without bond, which estate was probated in the County of Los Angeles. State of California. The bankrupt's wife died on September 13, 1938 in the State of New York. Immediately thereafter and prior to the commencement of these bankruptcy proceedings, the bankrupt filed his petition to probate [210] the Will of his wife and to be appointed executor thereof. This petition thereupon became a public record, of which the general public had knowledge. The entire files of said probate proceedings were introduced in evidence in this matter. These files indicate on their face that the bankrupt was appointed the executor on October 25, 1938; that on the 28th day of October, 1938, he duly caused to be published in the Los Angeles News of Los Angeles, California, a Notice to Creditors of his wife to present their claims against her estate in the manner as prescribed by law; that on the 27th day of January, 1939, the Security First National Bank of Los Angeles filed a request for special notice in said probate

estate having received knowledge of the probate thereof by reason of said publication of Notice to Creditors; that the said petition for probate of Will showed on its face that the bankrupt was an heir and beneficiary of his wife's estate; that said petition showed on its face that the value of her estate was more than $10,000.00.

Therefore, it must follow from the foregoing, that there certainly was no concealment of the fact that the bankrupt would probably inherit property from the estate of his deceased wife, which knowledge was publicized, as aforesaid, for several years prior to the commencement of these bankruptcy proceedings.

The evidence shows that the bankrupt paid all of the debts of his wife's estate in full and that he paid all of the income taxes and inheritance taxes out of moneys from said estate which it was required to pay.

Transcript Vol. 1, page 9, line 13 and following.

The evidence also shows that the bankrupt was the residuary beneficiary of his wife's estate, entitled to receive the bulk thereof. [211]

Transcript Vol. 2, page 102.

Now the bankrupt received approximately $18,000.00 from the estate of his deceased wife after paying in full all of her debts, expenses of administration, income taxes and inheritance taxes.

The objecting creditor makes an issue of the fact that the bankrupt spent this $18,000.00, and did not use it to pay approximately $1,800,000.00 of his then existing debts. It also makes an issue of the fact that the bankrupt withdrew some of this $18,000.00 from his

wife's estate prior to the final distribution thereof and without Court order.

No citation of authorities are submitted by the objecting creditor, and no authority exists for the contention that a beneficiary of an estate may not be paid moneys out of the estate without a court order therefor. The authorities are to the contrary. (In re Bennett's Estate, 13 Cal. (2d), 90 Pac. (2d) 84.) Assuming for the sake of argument that there is an authority for the contention *than* an executor may not pay out moneys to an heir of an estate even though he be the heir himself, without a Court order, nevertheless the only ones who could object to such acts would be the creditors of the estate of the deceased person and not creditors of the heir receiving the payment.

In this case there is no evidence to the effect that the bankrupt hindered, defrauded or delayed any creditor of his wife's estate by reason of payments which he made to himself out of the estate funds without an order of Court. As a matter of fact the probate proceedings show on their face that the bankrupt, as executor, duly and legally performed all of his duties and that he was entitled to his discharge as said executor.

The bankrupt testified that he used the $18,000.00 which he received from his wife's estate to live and that he paid some of his creditors, and that he tried to settle with others. [212]

Reporter's transcript Vol. 1, page 35, line 26 and following.

At the time of his wife's death the bankrupt was left with certain obligations which he could not readily satisfy without some planning. Furthermore, the bankrupt had

at all times been accustomed to living on an expensive scale commensurate with the standard of living of other members of his family. The evidence shows that the bankrupt offered to settle a portion of his fantastic indebtedness by paying the sum of $1,000.00 to one of his creditors. This offer was refused by that creditor.

Reporter's transcript Vol. 1, page 305, line 11.

It is rather obvious that good economy would dictate to the bankrupt to stretch his small inheritance in such a manner as to discharge all of his debts in the sum of $2,000,000.00 or none at all. There was very little which he could be expected to do with $18,000.00 in the face of owing nearly $2,000,000.00 save to offer token settlements. The bankrupt's only hope for rehabilitation was to use a portion of this $18,000.00 in some business venture, speculative though it might be, so that a possible windfall might result and large profits be thus obtained. This plan the bankrupt was never permitted to carry out because soon enough one of his creditors, having a judgment in a foreign jurisdiction, commenced an action in the Superior Court of the State of California in the County of Los Angeles against the bankrupt for moneys due. There was only one course open to the bankrupt as a result of this action and that was to commence bankruptcy proceedings.

At the time the said creditor commenced the action against the bankrupt based upon the foreign judgment, as aforesaid, all of the records of the court proceedings of the Superior Court in Los Angeles were open to the creditor. Certainly that creditor could not now say that the bankrupt concealed from it the fact that the bankrupt had an interest as an heir or beneficiary in his wife's

estate. No citation of authorities is necessary on the [213] question of law that the said creditor, having a foreign judgment, could not levy or attach any property belonging to the bankrupt located within the State of California until said foreign judgment was reduced to a judgment in the California jurisdiction. By reason thereof, the bankrupt was free to withdraw and spend moneys which he was entitled to receive from his wife's estate. His vigilance in this regard should not be and cannot be interpreted to be concealment.

C. Alleged Delay in Filing Inventory and Appraisement in Said Estate.

There was some confusion during the introduction of testimony in these proceedings concerning the date when the bankrupt, as executor of his wife's estate, caused to be filed an inventory of the assets thereof. This confusion is clarified by reading all of the testimony and not only a portion thereof. All of the testimony clearly discloses that the bankrupt filed an inventory in his wife's estate promptly after he received the bulk of the moneys to which the estate was entitled. The bulk of the moneys were received by him as executor of his wife's estate during the month of February, 1940, and the inventory was filed after the appraisement was completed, on March 12, 1940.

Transcript Vol. 1, page 309, line 7 and following, and page 310, line 24 and following.

Upon the request of said executor an inheritance tax appraiser was duly appointed by the Court as early as November 16, 1938; said appointment is a matter of public record; and any inquiry addressed to the appraiser

would have readily disclosed the character, nature and extent of the assets of said estate.

Certainly, the objecting creditor should not now be permitted to complaint that there was a delay in the filing of said inventory because the delay, if any, of the filing of the inventory could not possibly result in damage to the objecting creditor. As a [214] matter of fact all of the creditors, including the Reconstruction Finance Corporation, had knowledge of the fact that an inventory would be filed merely from the fact that probate proceedings were pending. Any timely inquiry on the part of the objecting creditor would have disclosed any and all facts commencing with the date of the filing of the probate proceedings which were disclosed upon the filing of the inventory in said estate.

General Comments:

1. Extra Judicial Letter of Referee Utley.

The objecting creditor has called *called* attention of the Court to the fact that after the referee had made his Findings of Fact, Conclusions of Law and Order in this proceeding, he wrote a letter to one of the attorneys for the objecting creditor, in which certain expressions of opinion were made by the referee. In this connection the bankrupt contends that said letter cannot serve any useful purpose in this case and does not in any way modify or amend the Findings of Fact, Conclusions of Law and Order.

The letter is merely a friendly expression of opinion written, no doubt, to appease the wrath of counsel for the objecting creditor. It mentions the fact that "from a strictly technical point of view, upon the cold question of

whether or not the bankrupt would be entitled to a discharge independent of the plan of arrangement offered," that counsel's contention would be correct. (Whatever counsel's contention happens to be.) Nevertheless the bankrupt contends that this letter should not receive the dignity of a finding of fact in this proceeding.

2. The bankrupt was not afraid of any of the creditors who filed claims in this bankruptcy proceeding and was only concerned [215] with settling with those creditors in preference over his ex-wife.

3. Rehabilitation of Bankrupt.

The objecting creditor has denied that the bankrupt tried to rehabilitate himself by using moneys inherited from his wife's estate. In the first place there is no legal obligation on the part of one who inherits money to use that inheritance, small as it may be, for the purpose of discharging his debts, large as they may be. By misleading mathematics, the objecting creditor, on page 16 of its brief, adds "one and one" together and obtains a total of $44,260.16. The objecting creditor starts with the sum of $26,260.16, which it claims, is money the bankrupt deposited and withdrew in the Ward bank account, but fails to show the source of such deposits and the purpose of such withdrawal. As a matter of fact the moneys deposited by the bankrupt in the Ward bank account were moneys which he received in full from the estate of his wife, the net amount of which was $18,000.00.

The objecting creditor erroneously duplicates these two items by adding them together, whereas they come from one and the same source. The evidence shows, in this connection, that the bankrupt withdrew moneys from the

estate of his wife and deposited such moneys in the F. J. Ward bank account. On one occasion the bankrupt withdrew moneys from the F. J. Ward bank account and redeposited the moneys to the account of his wife's estate.

Reporter's transcript Vol. 1, page 296, line 14.

The bankrupt paid $1000.00 to his attorney in Chicago and not $500.00; $1100.00 to Bekins Van & Storage and not $600.00;

Reporter's transcript Vol. 1, page 297, line 20.

He paid $700.00 to the trustees under the Will of Pauline D. [216] Rudolph.

Reporter's transcript Vol. 1, page 141, line 19 and following.

The bankrupt was left with "leases on all these obligations and everything else, and I spent that money in living and getting along with the exception of three trips that I took,".

Reporter's transcript Vol. 1, page 35, line 26 and following.

The bankrupt not only made a trip to Honolulu as admitted by the objecting creditor, but he went to New York and to Chicago and tried to make arrangements "to settle my other accounts."

Transcript Vol. 1, page 140, line 23.

4. Plan of Arrangement.

The sum of $32,000.00 which is being offered in connection with the bankrupt's plan of arrangement is not his money but money belonging to his step-son, Jay Gould, the son of the bankrupt's deceased wife. This fact does not seem to be emphasized by the objecting creditor.

This is not a case of a bankrupt trying to bargain with his creditors and the court for the purpose of buying his discharge. The records in this bankruptcy proceeding clearly indicate that there are certain valuable properties in which the bankrupt at one time had an interest, but which are now being claimed by others.

Reporter's transcript of testimony of Francis John Ward page 3, line 24 and following.

The plan is being offered by the bankrupt's family so that his creditors would receive something in payment of their claims and so that the property in dispute would be released by the trustee to those who rightfully claimed the same. The records in these proceedings indicate that the actions at law to determine title to said property have been abated awaiting the confirmation of the plan of arrangement.

5. Assignment of Bankrupt's Interest in Trust Estate Created by His Father's Will. [217]

The bankrupt will receive nothing from his father's will even though he should survive his mother. It is not fair argument to say that the present plan of arrangement approved by a majority in number and amount of creditors should not be confirmed by the court merely because one of the creditors is in a better position to gamble for higher stakes than are the other creditors. As a matter of fact the bankrupt had assigned, many years ago, his entire interest in the estate of his deceased father as security for an indebtedness to the creditor, Pauline D. Rudolph. Assignment of a remaining interest which the bankrupt might have in his father's estate was made to the Continental Illinois National Bank and Trust Company of Chicago, Illinois. These assignees are satisfied

with the legality of the assignment of the bankrupt's interest in his father's estate, as aforesaid. A mere statement made by the objecting creditor that these assignments are invalid, is of course, not authoritative. In any event it might prove to be bad instead of good economy for the objecting creditor and other creditors to await the death of the bankrupt's mother and the adjudication of the validity of the bankrupt's assignments, as aforesaid, and the further possibility that the bankrupt would be even more heavily indebted on the day of reckoning than he is today. The plan of arrangement has been approved by a majority of the creditors in amount and number and it is for their best interests, and it is fair, equitable and feasible, and the proposal is made in good faith, and there is no reason why the bankrupt should not have his discharge.

6. Citation of Authorities.

(a) In re: Manasse, 125 Fed. 2d 647.

This case cited by the objecting creditor was clearly distinguished by the bankrupt in his answering points and authorities in opposition to the petition to review the order of the referee. Briefly, in that case; [218]

(a) The order of the referee was affirmed, although the order was one denying discharge.

(b) The bankrupt maintained a bank account in his wife's name without disclosing that fact to the bank nor did the bank records show that he was the owner of said bank account.

In our case the bankrupt did disclose to the bank and the bank's records did show that he had an interest in the

F. J. Ward bank account and the bankrupt could and did withdraw moneys from said account, upon his check and signature, to pay his debts in the community and elsewhere.

(c) In that case the bankrupt failed to disclose the existence of the bank account in his schedule of assets,

whereas, in our case the bankrupt did disclose the existence of said account "in the statement of assets" filed together with his schedule of assets.

(d) In that case the court found that the bankrupt was a lawyer and certainly knew, in opening an account in his wife's name, that he intended to defraud, delay and hinder his creditors.

(e) In that case the court found that the bankrupt opened the bank account in his wife's name with the intent to conceal his money from his creditors,

whereas in our case the court found to the contrary.

Dated: March 29, 1944.

Respectfully submitted,

SIMON & GARBUS

By Morton Garbus

Attorneys for Bankrupt

[Endorsed]: Filed Apr. 5, 1944. [219]

[Title of District Court and Cause.]

PORTIONS OF TRANSCRIPT SUPPORTING BANKRUPT'S DISCHARGE AND PLAN

I.

Keeping of Books and Records:

Vol. 1, Page 72, line 4.

Q. The Referee: Did you at any time keep books and records during the course of the transactions which resulted in your becoming indebted in the amount indicated?

A. Well, your Honor, that goes a long ways back and frankly I don't believe so. I don't believe I had any records. I had as I have explained before I was a partner of this brokerage firm. I organized the Chicago Stadium, in which I put a considerable amount of money with my brother

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A. Well, the only thing I can say is that I have no recollection of having kept books and records. I can try to find old check books, but this goes back

Vol. 1, Page 99, Line 25

Q. When you were a partner in the brokerage company of Keech [220] and Company it kept books, did it not?

A. Yes sir.

Q. When you were interested in the Chicago, Illinois Stadium there were books kept with reference to the stadium transactions?

A. That is right.

Q. And since you lost the large sums of money and since the stock market crash the only business activities

in which you were engaged, were those you related here, the oil investments and the small motion picture enterprise?

A. Yes.

Q. You had no business of your own?

A. No.

Q. You were not engaged in business?

A. No sir.

Q. Therefore, you kept no books?

A. Correct.

Q. But you did make income tax returns showing what income you received for the years 1930, 1931, 1932, 1935, 1936 and 1937?

A. Yes. Some joint.

Q. In the years in which you did not file income tax returns you did not have any income?

A. Correct.

Vol. 1, Page 99, Line 16

Q. Mr. Strotz, you filed income tax returns for 1938 and 1939, also did you not for the estate?

A. For the estate, yes.

Q. And as the executor of the estate?

A. Correct, sir.

Q. And as executor of the estate you paid income taxes to the State of California and to the United States government for those two years?

A. Correct, sir. [221]

Vol. 1, Page 144, Line 20

Q. Do you have the cancelled checks of the Beach Petroleum Company?

A. Yes, sir.

II.

F. J. Ward Bank Account for Rehabilitation and Not Concealment.

Testimony of F. J. Ward

Reporter's transcript of testimony of Francis John Ward,

Page 21, Line 1.

A. Well, I can't remember the exact conversation but I do remember that the idea was that there would be a place where money could be deposited in connection with any future oil deal that could not be attached by his wife.

Page 22, Line 7.

Q. And did he ever discuss with you the fact that some of these eastern creditors were coming out here to California causing him some annoyance?

A. As I remember he told me that he didn't think there would be any judgments out here in Los Angeles.

Testimony of Harold C. Strotz, Bankrupt:

Vol. 1, Page 107, Line 19.

Q. You had an account in the name of F. J. Ward?

A. That is right.

Q. What did you use that account for, the account in the name of F. J. Ward?

A. I used it as a bank account.

Q. To pay your personal expenses and things of that kind?

A. Yes.

Q. To pay your department store accounts?

A. Yes. [222]

III.

There Was No Concealment of Moneys From the Estate of Anne Gould Strotz, Deceased.

Testimony of Bankrupt:

Vol. 1, Page 35, Line 26.

Q. Now, the moneys that you received in your wife's estate appears to be, from the latter part of 1939 up until March of 1940, from *you* report appears to be approximately $18,000.00. What did you do with that sum of money?

A. Well, I will have to explain the situation to you. My step-son was going to enter Harvard in the Fall of 1938 and we had just taken a house at 1118 Tower Road, Beverly Hills, and we went to New York and we took an apartment in New York at 375 Park Avenue and my wife committed suicide on the 13th of September, 1938, and it left me with these leases and all these obligations and everything else, and I spent that money in living and getting along with the exception of three trips that I took.

Q. Do you mean to say you spent appproximately $18,000.00 in six months just for living expenses?

A. No, I didn't say six months. I say from September, 1938 until about July of this year or June of this year (1941). My wife had an income of approximately $36,000.00 a year and we spent well over $2200.00 or $2300.00 a month. Naturally, I cut it down as fast as I could but I couldn't get rid of the house until August of 1939.

Vol. 1, Page 140, Line 23.

A. Well, I went to Honolulu and I went to New York and I went to Chicago and I tried to make arrangements to settle my other accounts.

Vol. 1, Page 141, Line 19.

Q. The question is, have you any record of how you spent this $17,000.00 you got from your wife's estate?

A. I explained to you I received it at different times. I [223] used some of it for living expenses and some for trips. I will try to break it down and give you an exact accounting, if that is what you want.

Q. You show a check made out for $700.00 to the trustees under the Will of Pauline D. Rudolph, $700.00. What was that for?

A. Well, if you want to go into the records you will find I paid them probably $34,000.00 in interest at odd times in the last ten years. Most of it was paid in 1931 and 1932.

Vol. 2, Page 102.

I was the residuary beneficiary of the estate and withdrew funds from the estate account from time to time and used those funds for my personal benefit.

Vol. I, Page 9, Line 13.

A. I paid claims, paid taxes, paid expenses that I had which I was left with until I could get rid of the establishment that we had at the time.

Q. Now, the claims and taxes you say you paid out of this $38,000.00, were they claims against the property of the estate of your wife?

A. Yes, claims against my wife.

Q. And the taxes?

A. And the taxes.

Vol. 1, Page 296, Line 14.

A. In the first place I returned to the estate $3400.00, so it does not amount to $11,500.00. You have the deposit back there later.

A. But it wasn't any $11,500.00, I actually got around $8000.00.

Vol. 1, Page 297, Line 20.

Q. You had $8000.00?

A. I didn't say I had $8000.00. I can tell you a few things I did with it. I paid my attorney $1000.00 in Chicago; Bekins Van [224] and Storage $1100.00. I will get the whole list for that, of what I paid and it can be all corroborated. Whether I had any of that money left at the time—I think I did have something because I was holding it to put back in the estate because the estate would need it.

Statement in the Record by Mr. Garbus (Attorney for Bankrupt).

Vol. 1, Page 305, Line 11.

We offered $1000.00 to settle that case, Mr. Dechter, and counsel was going to find out from his client whether it would be accepted, and he didn't seem to be anxious about it at all.

IV.

Delay in Filing Inventory in Estate of Bankrupt's Deceased Wife.

Testimony of Bankrupt

Vol. 1, Page 306, Line 23.

A. In the first place if you will see, this money came at different times. The last of it arrived in February of 1940.

Q. No inventory and appraisement was filed by you until about October, 1940?

A. I don't know. It was entirely in my attorney's hands. I didn't pay any attention to it.

Q. Did you have your attorney discuss the fact why an inventory should be filed?

A. I don't remember we did.

Mr. Garbus: No, we did not, Mr. Dechter.

Mr. Dechter: You have no explanation now to offer why the inventory was not filed until you were ready to close the estate?

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Mr. Garbus: Just a moment, Mr. Strotz. I would like to know when the inventory was filed. You said October. Do you have that date?

Mr. Dechter: That is my recollection from Mr. Currer.

Mr. Garbus: Mr. Currer doesn't know. [225]

Mr. Dechter: You have your file here?

Mr. Garbus: I am sorry, I have not. If I did I wouldn't waste the court's time. I wanted to know where you got the date. If the money was received in February and we didn't file it (inventory) until October I would

like to know why. You may have the wrong date. Do you have the date? You made the statement now let us follow it through.

Vol. 1, Page 309, Line 7.

Now, can you tell me why between the 25th day of October, 1938 and the 12th day of March, 1940 no inventory and appraisement had been filed by you although you had received and cashed before that time a sum in excess of $40,000.00?

A. Well yes, I can tell you one of the reasons for it.

Mr. Garbus: Do I understand now the inventory was filed in March and not October of 1940?

Mr. Dechter: Your statement in your report has filled in in ink the 12th of March, 1940.

Mr. Garbus: What difference does it make whether ink or pencil, is that the date now, March or October?

Vol. 1, Page 310, Line 24.

Mr. Strotz: The result was that I never knew until early sometime in 1940 just exactly how much money my wife's estate would receive because the Commercial Trust Company of New Jersey finally made a statement in which they took back a great number of these mortgages.

V.

Evidence re: Assignment of Bankrupt's Interest in Trust Estate Created by His Father's Will.

Testimony of Bankrupt

Vol. 1, Page 336, Line 24.

Q. I notice you executed an assignment of your interest in the trust to the estate of Pauline D. Rudolph.

Was that assignment [226] delivered to the Trust Company or the First National Bank of Chicago?

A. Yes sir.

Q. Did they accept it?

A. Why, you will have to ask them. I don't know whether they accepted it or not. I didn't deliver it. Her attorneys delivered it.

Q. There has been nothing done by you toward her estate or representatives in releasing or cancelling that assignment?

A. No sir.

Q. Was she related to you in any way, Mrs. Pauline D. Rudolph?

A. No sir.

Q. Just a business transaction?

A. Yes sir. I had formerly done business with her husband.

Q. I notice you also make a notation that you gave an order to the Continental Illinois National Bank and Trust Company to pay them a certain amount out of this trust.

A. Yes.

VI.

Bankrupt Paid Certain Debts to Creditors Immediately Prior to Filing Petition Out of Money Inherited From His Wife's Estate.

Testimony of Bankrupt.

Vol. 1, Page 334, Line 16.

Q. Have you made any payments to any creditors within the last year?

A. Yes, I have.

Q. To whom?

A. To Hamilton Vose, Jr.

Q. How much?

A. $500.00.

Q. When was that?

A. In February, 1940. [227]

Q. And what was that for?

A. I was indebted to him.

Q. How long had you been indebted to him?

A. I had been indebted to him I think since 1931 or 1932.

Q. I notice a check, payment on account of principal and ten months interest to Mrs. Eleanor Voss. Is that the same party?

A. No, one is Voss and the other is Vose. They have no connection. Mrs. Eleanor Voss is the mother of my former wife.

Q. And that was an indebtedness of your former wife and not yours?

A. Correct.

Vol. 1, Page 311, Line 20.

If you will look, I paid all the accounts as fast as I could on bills and claims against the estate.

Vol. 1, Page 9, Line 13.

I paid claims, paid taxes, paid expenses that I had which I was left with until I could get rid of the establishment that we had at the time.

Vol. 1, Page 135, Line 19.

Q. You show Mrs. Bertha Feld, which you show as interest paid, $773.98. What is that?

A. You will find she is one of the people I owed money to. I paid her interest, lots of it in the past years. If you want to go on I can show you thousands of cases I paid interest.

Q. Interest on a note she held?

A. Yes.

Q. Was that note secured in any way?

A. No sir, it is listed among my liabilities.

Vol. 1, Page 297, Line 22.

I paid my attorney $1000.00 in Chicago; Bekins Van & Storage $1100.00. I will get the whole list up for that of what I paid and it can be corroborated.

Dated: March 27, 1944.

SIMON & GARBUS
By Morton Garbus
Attorneys for Bankrupt

[Endorsed]: Filed Apr. 5, 1944. [228]

United States District Court
Southern District of California
Central Division

No. 37302-M. Bankruptcy.

In the Matter of

HAROLD C. STROTZ,

Bankrupt,

MEMORANDUM OF DECISION AND ORDER ON REVIEW OF REFEREES' ORDERS.

Primarily, a misapprehension by some of counsel, as shown by their memoranda filed in the review, should be removed.

The only feature of the review of the referee's order dated December 2, 1942, considered and decided by the judge on May 15, 1943, was the legal question of the applicable State statute of limitations attachable to the so-called Vollentine claim. This clearly appears from the memorandum and order filed herein May 15, 1943, reference thereto and to notations thereof in the bankruptcy docket being hereby made.

Thus all issues undecided as aforesaid by the ruling of May 15, 1943, are now before the judge in reviewing the referees' orders dated December 2, 1942 and September 23, 1943, respectively.

The record before us is voluminous, both as to evidential matter and legal memoranda. We have considered it with care and have made proper allowance for the discretion and the prerogative of the trier of facts in reviewing orders of the referee.

The basic question in this review is whether the debtor is entitled under the Bankruptcy Act to have the amended plan under Chapter XI, filed May 27, 1942, confirmed in the face of objections by his principal creditor.

The ultimate solution of the problem turns upon whether the debtor has been guilty of any of the acts which would be a bar to the discharge of a bankrupt.

Section 14 of the Act, U. S. C., Title 11, Chapter 3, section 32, as far as pertinent is as follows: "The court shall grant the discharge unless satisfied that the bankrupt (debtor) has, (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition in bankruptcy transferred, removed, destroyed, [229] or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay or defraud his creditors." This provision of the Act is expressly incorporated in and made a part of Chapter XI, and must be given consideration in arrangement proceedings such as the one under review.

While the learned referee evinced a deduction from the evidence that the debtor had resorted to methods calculated to conceal his property during the interdicted time, he concluded that the admitted and undisputed acts of the debtor to that end did not sufficiently establish an intent by the debtor to hinder, delay, or defraud his creditors, We think, after examining the record, that such conclusion is unwarranted and clearly erroneous.

Two outstanding and incontroverted transactions by the debtor, an experienced man of affairs, were designed to remove and conceal a substantial amount of his money and property from the reach of some of his creditors:

(1) An obvious instrument of concealment was the so-called F. J. Ward Bank Account, and (2) the irregular method of distributing the funds of the estate of Anna Gould Strotz, deceased, to himself as a residuary beneficiary without court order and the use of some of such money for his personal expenses, reasonably warrant no deduction but that of concealment to hinder and delay creditors.

That the concealment may not have injured the creditors has been held to be irrelevant, Duggins v. Heffron, (C. C. A. 9), 128 F. 2d 546, and it is also established by eminent authority that the concealment need not be from all the bankrupt's creditors, Kolesinski v. Mashey, (C. C. A. 2), 127 F. 2d 528.

The findings of fact, conclusions of law and order of the referee dated September 23, 1943, are confirmed in toto and adopted and made the findings of fact, conclusions of law and order of this court. Exceptions allowed Reconstruction Finance Corporation.

The findings of fact of the referee dated December 2, 1942, being numbered 1, 2, 3, 3a, 4, 5, 9, 10, 14, 15, 16, 18, 19, 20, to the [230] comma in line 19 of page 7, 22, 24, to the last word on line 25 of page 9, 26a and 27, are adopted and confirmed. All other findings dated December 2, 1942 are not adopted or confirmed but in lieu thereof from the record before the court on review the judge finds that the proposed plan of arrangement is not feasible, that the debtor has been guilty of acts which would be a bar to the discharge of a bankrupt under section 14(4) of the Act in establishing, maintaining and using as an instrumentality of concealment from creditors

the so-called F. J. Ward Bank Account in Security-First National Bank of Los Angeles, Hollywood and Cahuenga Branch, in which from October 22, 1939 until August 30, 1940, the debtor made many deposits, aggregating $16,910.77, and issued many checks, as shown by Trustee's Exhibit 2 of the file transmitted by the referee.

Conclusions of law 1 and 2 dated December 2, 1942, are not adopted or confirmed, and are vacated, and in lieu thereof the court concludes that the evidence in support of the objection to the debtor's petition for confirmation of arrangement under Chapter XI of the Act requires that the referee's order approving the amended plan and discharging the debtor, dated December 2, 1942, be vacated and held for naught, and it is so ordered. The proposed amended plan of May 27, 1942, is rejected and this entire record and the files are returned to the referee in bankruptcy for appropriate proceedings in conformity with this memorandum and order.

Dated June 28, 1944.

PAUL J. McCORMICK
United States District Judge.

Order entered Jun. 28, 1944. Docketed Jun. 28, 1944. Book 26, page 380. Edmund L. Smith, Clerk. By B. B. Hansen, Deputy.

Notation made in Bankruptcy Docket on Jun. 28, 1944, pursuant to Rule 79(a), Civil Rules of Procedure.

[Endorsed]: Filed Jun. 28, 1944. [231]

[Title of District Court and Cause.]

NOTICE OF ENTRY OF DECISION AND JUDGMENT BY DISTRICT COURT ON REVIEW OF REFEREES' ORDER

To the Trustee in the above matter and to Raphael Dechter, his attorney:

To the Debtor and to Simon & Garbus, his attorneys:

To Eugenia Vollintine, claimant and to Harold L. Watt and Walter C. Durst, her attorneys:

You, and each of you, will please take notice that the decision and judgment of the Honorable Paul J. McCormick, United States District Judge on review of the Referees' Orders herein was filed and entered in the above entitled court on June 28, 1944.

Dated: July 5, 1944.

FRANK MICHELS and
JACOB J. LIEBERMAN,
By Jacob J. Lieberman
Attorneys for Reconstruction Finance Corporation [232]

[Affidavit of Service by Mail.]

[Endorsed]: Filed Jul. 6, 1944. [233]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Harold C. Strotz, the bankrupt above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Decision and Order made and entered by the above entitled Court and Paul J. McCormick, United States District Judge, dated June 28, 1944, which said Decision and Order reverses the Order of the Referee herein dated December 2, 1942, which last mentioned Order granted the said bankrupt's petition for confirmation of arrangement under Chapter XI of the Bankruptcy Act, and discharging the said bankrupt from his debts as scheduled in the above proceeding.

Dated: August 3, 1944.

SIMON & GARBUS
By Morton Garbus
Attorneys for Bankrupt

[Endorsed]: Filed & mailed copy to attys for R. F. C. Aug. 4, 1944. [237]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 247 inclusive contain full, true and correct copies of Debtor's Petition and Schedules; Adjudication and Order of Reference; Amendment to Schedule A-3; Petition for Arrangement under Chapter XI, Section 321; Amended Petition for Arrangement under Chapter XI, Section 321; Amendment to Petition for Arrangement as Amended; Referee's Certificate on Petition for Review; Specification of Objection to Discharge filed by Martin T. O'Brien, as Receiver etc. et al.; Specification of Objections to Discharge filed by Reconstruction Finance Corporation; Answer to Specification of Objection to Discharge; Objection of Creditor Continental Illinois National Bank and Trust Company of Chicago to Confirmation of Arrangement; Surrender of Security to Bankrupt Estate; Specifications of Objections to Amended Petition for Arrangement under Chapter XI, Section 321 filed by Reconstruction Finance Corporation; Consent of Creditor, Continental Illinois National Bank and Trust Company of Chicago; Trustee's Exhibit 2; Memorandum of Decision re: Objections to Discharge Trustee vs. F. J. Ward Meeting of Creditors as Required by Sec. 334; Proposed Findings of Fact, Conclusions of Law and Order; Objections to Proposed Findings of Fact, Conclusions of Law and Order and Petition for Reopening of

Hearings for Submission of Additional Testimony; Objections to Proposed Findings of Fact, Conclusions of Law and Order, upon Objections of R. F. C. to Bankrupt's Discharge and to Claim of Eugenia Vollentine; Two Stipulations filed Nov. 13, 1942 before Referee; Findings of Fact, Conclusions of Law and Order; Order for Extension of Time to File Petition for Review; Petition of Reconstruction Finance Corporation to Review Order Entered December 2, 1942; Points and Authorities in Support of Petition to Review Order of Referee Entered December 2, 1942; Answering Points and Authorities in Opposition to Petition to Review Order of Referee; Objections of Reconstruction Finance Corporation to Certificate Filed by Referee Ernest R. Utley upon its Petition to Review the Orders Entered by said Referee December 2, 1942 and Proposed Summary of Evidence; Memorandum and Order Re-Referring Proceedings to Referee; Brief of Reconstruction Finance Corporation of Facts Upon its Objections to Bankrupt's Discharge and Plan of Arrangement; Portions of Transcript Supporting Objections of Reconstruction Finance Corporation to Bankrupt's Discharge and Plan; Reply Brief of Bankrupt in Support of his Discharge and Plan of Arrangement; Portions of Transcript Supporting Bankrupt's Discharge and Plan; Memorandum of Decision and Order on Review of Referee's Orders; Notice of Entry of Decision and Judgment by District Court on Review of Referee's Order; Petition for Rehearing; Minute Order Entered July 24, 1944; Notice of Appeal; Cash Bond

on Appeal; Stipulation Extending Time to File Designation of Contents of Record on Appeal and Order; Designation of Contents of Record on Appeal and Designation of Additional Contents of Record on Appeal Submitted by Reconstruction Finance Corporation, Appellee which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record on appeal amount to $66.40 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 30th day of October, 1944.

[Seal] EDMUND L. SMITH,
Clerk,
By L. Wayne Thomas,
Deputy Clerk.

[Endorsed]: No. 10909. United States Circuit Court of Appeals for the Ninth Circuit. Harold C. Strotz, Appellant, vs. Reconstruction Finance Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed October 31, 1944.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit
No. 10909

In the Matter of

HAROLD C. STROTZ,

Bankrupt.

APPELLANT'S STATEMENT OF POINTS AND DESIGNATION OF PARTS OF RECORD ON APPEAL RULE 19 (6)

Comes now the appellant, Harold C. Strotz, bankrupt, in the above entitled matter, and files his statement of the points on which he intends to rely on the appeal, and designates the parts of the record which he thinks necessary for the consideration thereof, as follows:

Statement of Points on Which Appellant Relies:

1. That the evidence does not support the memorandum of decision and order on review of Referee's orders, signed by Paul J. McCormick, United States District Judge, and dated June 28th, 1944.

2. That there is not sufficient evidence in support of the order to the effect that the bankrupt transferred, removed, destroyed or cancelled, or permitted to be removed, destroyed or cancelled any of his property with intent to delay, hinder or defraud his creditors.

3. That there is not sufficient evidence to support the order to the effect that the bankrupt had any creditors whom he could have intended to hinder, delay or defraud.

4. That the bankrupt's amended petition for arrangement under Chapter 11, Section 321, filed in the bankruptcy proceedings on July 2, 1941, and his amendment thereto filed May 27, 1942, should have been approved and his discharge granted.

* * * * * * * * *

Respectfully submitted,

SIMON & GARBUS

By Morton Garbus

Attorneys for Appellant

[Affidavit of Service by Mail.]

[Title of Circuit Court of Appeals and Cause.]

STIPULATION FOR DIMINUTION OF RECORD ON APPEAL

It is hereby stipulated by and between counsel for the parties to the above entitled appeal as follows:

That in lieu of the entire reporter's transcript of testimony taken in the lower Court, only the portions thereof as are contained within Items 11 and 13 of Appellant's Statement of Points and Designation of Parts of Record on Appeal, being (11) Reconstruction Finance Corporation's Portions of Transcript Supporting Objections of Reconstruction Finance Corporation to Bankrupt's Discharge and Plan filed on or about March 23, 1944, and being (13) Bankrupt's Portion of Transcript Supporting his Discharge and Plan of Arrangement filed on or about March 29, 1944, be relied upon in this appeal, as the pertinent testimony, provided that all of the items set forth in the Designation of Additional Contents of Record on Appeal Submitted by Reconstruction Finance Corporation, Appellee (Rule 75), shall be printed and considered upon said appeal.

Dated: December 7, 1944.

SIMON & GARBUS.
By Morton Garbus
Attorneys for Appellant

Frank Michels
Jacob J. Lieberman
Attorneys for Appellee

[Endorsed]: Filed Dec. 11, 1944. Paul P. O'Brien, Clerk.